COURT, U. S.

IN THE

Supreme Court of the United States

October Term, 1974.

No. 74- 856

CHESTER HOUSING AUTHORITY
Petitioner,

v.

PENNSYLVANIA HUMAN RELATIONS COMMISSION,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA.

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v.

PENNSYLVANIA HUMAN RELATIONS COMMISSION
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA.

Chester Housing Authority hereby petitions that a Writ of Certiorari issue to review the decision of the Supreme Court of Pennsylvania entered in this case on October 16, 1974.

I. OPINIONS BELOW.

The Pennsylvania Human Relations Commission did not deliver an opinion in this case. The findings of fact, conclusions of law, decision, and final order of the Pennsylvania Human Relations Commission are not officially reported, but are printed in Appendix "A" hereof, pp. A37-A47. The opinion of the Commonwealth Court of Pennsylvania is officially reported at 9 Pa. Commonwealth 415, unofficially reported at 305 A. 2d 751, and printed in Appendix A, pp. A24-A35. The opinion of the Supreme Court of Pennsylvania is not yet officially reported, but is unofficially reported at 327 A. 2d 335, and is printed in Appendix A, pp. A1-A22.

II. JURISDICTION.

The decision of the Supreme Court of Pennsylvania was entered on October 16, 1974, Appendix A, pp. A1-A22. Undersigned counsel was engaged by Petitioner on November 14, 1974, after the time for filing a petition for reargument had expired, under Rule 64 of the Rules of the Supreme Court of Pennsylvania. On November 25, 1974, counsel filed a petition for leave to file a petition for reargument and for an extension of the time therefor, which petition was denied by order of the Supreme Court of Pennsylvania, dated December 17, 1974, Appendix A, p. A23.

The jurisdiction of this Court to review the decision of the Supreme Court of Pennsylvania upon Writ of Certiorari is invoked under 28 U. S. C. § 1257(3).

III. QUESTIONS PRESENTED.

This case involves the action of a state agency in attempting to desegregate federally assisted housing by establishing a program of absolute tenant applicant priorities which is based entirely upon the race of the applicant, discriminates against racial minorities, and is in direct conflict with the allocation system for federally-funded housing established by the United States. The following questions are, therefore, presented:

1. May a state agency order a federally-funded housing authority to discriminate, on the basis of race, against minorities in the allocation of available federally-funded housing in order to desegregate housing projects?

2. May a state agency order a federally-funded housing authority to establish a system of allocation of and priority to federally-funded housing based entirely upon the race of the applicant and in direct conflict with the allocation and priority system established by the United States?

IV. CONSTITUTIONAL PROVISIONS, STATUTES, AND REGULATIONS INVOLVED.

The constitutional provisions, statutes, and regulations involved in this case are cited here and fully set forth in Appendix "B":

A. United States Constitution

1. Article VI, Clause 2; App. A48.
2. Amendment XIV, Section 1; App. A48.

B. Federal Statutes

1. Civil Rights Act of 1866, Section 1; 42 U. S. C. § 1982; App. A48.
2. Civil Rights Act of 1964, Title VI, Section 601; 42 U. S. C. § 2000d; App. A49.
3. Fair Housing Act of 1968, Title VIII:
   a. Section 801; 42 U. S. C. § 3601; App. A49.
   b. Section 804; 42 U. S. C. § 3604; App. A49-A50.
   c. Section 815; 42 U. S. C. § 3615; App A50.
4. United States Housing Act of 1937, as amended through 1974:
   a. Section 1; 42 U. S. C. § 1401; App. A50-A51.
   b. Section 10(g)(2); 42 U. S. C. § 1410(g)(2); App. A51.
5. Housing and Urban Development Act of 1968, as amended, Title XVI, Section 1601; 42 U. S. C. § 1441; App. A52.

6. Housing and Community Development Act of 1974, Pub. L. 93-383, 88 Stat. 663:

   a. Section 101: App. A53-A56.

   b. Section 109(a): App. A56.

   c. Section 201(a) [providing for Sections 2, 3(1), 3(2), and 6(c)(4)(A) of the United States Housing Act of 1937, as amended]: App. A56-A60.

C. Federal Regulations

1. Regulations of the United States Department of Housing and Urban Development, under the Civil Rights Act of 1964, 24 C. F. R.

   a. Section 1.4(a): App. A60.

   b. Section 2.4(b)(1) and (2): App. A60-A61.

2. United States Department of Housing and Urban Development, Low-Rent Housing Administration of Program Handbook, Circular RHA 7401.1, Chapter 9, Section 1, Appendix 2, Paragraph 1(d)(1): App. A62-A64.

3. United States Department of Housing and Urban Development, Instructions For Preparation of Civil Rights Plan of Selection of Applicants and Assignment of Dwelling Units

   a. Instructions, first three paragraphs: App. A65.

   b. Plan B [chosen by Chester Housing Authority]: App. A65-A67.

4. Consolidated Annual Contributions Contract of October 15, 1970, between the United States of America and the Chester Housing Authority

   a. Part I, Section 14(A): App. A68.

   b. Part II, Sections 208 and 209: App. A68-A70.

V. STATEMENT OF THE CASE.

A. Background.

Petitioner Chester Housing Authority ("CHA") is a federally funded public housing agency of the Commonwealth of Pennsylvania operating low income housing in four family projects of approximately three hundred dwelling units each, one project for the elderly, and certain leased housing, pursuant to the United States Housing Act of 1937, as amended, 42 U. S. C. § 1401 *et seq.*, and the Pennsylvania Housing Authority's Law, Act of May 28, 1937, P. L. 955, as amended, 35 P. S. § 1541 *et seq.* It receives substantially all of its operating funds from the United States government under the terms of a consolidated annual contributions contract ("the Contract") of October 15, 1970, with the United States of America, entered into pursuant to Section 10 of the United States Housing Act, 42 U. S. C. § 1410. CHA's operation of its housing projects is, therefore, subject to the terms of the Contract, all federal statutes, regulations, and other directives applying to federally assisted programs, and the regulations and directives of the United States Department of Housing and Urban Development ("HUD").

Pursuant to its federal status, CHA's allocation of its housing facilities and priorities for admission to its family housing project is largely established by the United States. In accordance with Section 10(g)(2) of the Housing Act of 1937, as amended through 1974, Sections 208 and 209 of the Contract (App. A68-A70) require CHA to establish a preference system for the assignment of available dwelling units, based upon the applicant's housing needs, family status, source of income, disability, and age, with special preferences for displaced families and families of veterans.

In addition, HUD has issued directives as to tenant selection procedures to be followed by all local housing authorities to effectuate the provisions of Title VI of the Civil Right Act of 1964, 42 U. S. C. § 2000d. HUD's Low-Rent Housing Administration of Program Handbook, Chapter 9, Section 1, Appendix 2, Circular RHA 7401.1, Paragraph 1(d)(1) (App. A62-A64) requires each local housing authority receiving federal assistance under the Housing Act of 1937 to adopt a plan for the selection of applicants and assignment of dwelling units "to assure equal opportunity and non discrimination on the grounds of race, color, or national origin." (App. A62). Pursuant to this directive HUD has issued instructions (App. A64), requiring each local housing authority to adopt one of two written tenant selection plans, known as "Plan A" and "Plan B", both of which are based upon the position of the applicant for housing on the eligible applicant list and the location of available vacant dwelling units. The housing authority must adopt the plan, in its entirety, verbatim. Pursuant to this federal directive, CHA adopted Plan B (App. A65-A67).

B. Proceedings Below.

On May 1, 1970, Respondent Pennsylvania Human Relations Commission ("the Commission"), a state agency established to enforce the Pennsylvania Human Relations Act, Act of October 27, 1955, P. L. 744, as amended, 42 P. S. § 951 *et seq.*, filed a complaint against CHA alleging that it maintained housing projects segregated by race, and that such segregation and the failure to take corrective action was a violation of Section 5(h)(1) of the Human Relations Act, 43 P. S. § 955(h)(1). The complaint further alleged that CHA effectively aided and abetted the segregation of the schools in the city of Chester, in violation of Section 5(e) of the Human Relations Act, 43 P. S. § 955(e).

CHA filed an answer to the complaint denying that it was subject to the terms of the Human Relations Act or that it had practiced or planned any discrimination in its placement of applicants for tenancy or assignment of dwelling units. In Paragraph 3 of its answer CHA specifically stated that it was subject to federal requirements and the regulations and directives of HUD, including those relating to tenant placement and assignment of dwelling units. CHA thus raised the federal issues of this case at the earliest possible stage of the proceedings.

On August 5, 1971, a hearing was held before the Commission on the allegations of the complaint. At the hearing CHA presented evidence in support of its defense, including evidence concerning federal directives on assignment of dwelling units, and non-discrimination in tenant selection. After the hearing, the Commission entered findings of fact and conclusions of law (App. A37-A43) and a decision (App. A44) finding that CHA "has engaged in discriminatory practices in violation of Sections 5(h)(1) and 5(e) of the Pennsylvania Human Relations Act."

The Commission also entered a final order (App. A45-A47) directing, among other things, that CHA cease and desist from employing its present tenant selection and assignment procedures; develop, for the approval of the Commission, a program for all of CHA's projects to reflect the racial composition of all public housing tenants in the city of Chester; file detailed periodic reports with the Commission as to the procedures for effecting such desegregation; and meet with the School District of the city of Chester for the preparation and submission of a plan for priority selection of tenants with school-age children to facilitate the desegregation of the schools in Chester.

With respect to CHA's four family housing projects, the final order provided as follows:

That Respondent Chester Housing Authority, its agents, servants, employees and each of their respective successors:

* * *

2. Shall cease and desist from renting housing accommodations in McCaffery Village to white tenant families until the racial composition of said project reflects the ratio of Negro to white tenant families in all public housing projects under Respondent's supervision, direction and control.

3. Shall cease and desist from renting housing accommodations in Lamokin Village, William Penn Village and Ruth L. Bennett Homes to Negro tenant families until the racial composition of each of said projects reflects the ratio of white to Negro tenant families in all public housing projects under Respondent's supervision, direction and control.

The Commission thus ordered CHA to grant or deny tenancy in all of its federally-funded family projects solely on the basis of the applicant's race, and to deny Black applicants access to three of the four projects absolutely, even if vacant units were available, notwithstanding the federal housing and anti-discrimination mandates to the contrary.

CHA excepted to virtually all of the Commission's findings of fact and conclusions of law, its decision, and all portions of the final order, and timely appealed to the Commonwealth Court of Pennsylvania.

CHA presented all the federal issues of this case to the Commonwealth Court. As shown by the Court's opinion, CHA raised the significance of federal requirements (App. A31-A32), and CHA's brief stated that the priority system

imposed by the order of the Human Relations Commission was:

> contrary and contradictory of the priority system specified by federal legislation and implemented by HUD; (Brief for Appellant before the Commonwealth Court of Pennsylvania at 17).

Similarly, CHA's brief argued that the Commission's order required unlawful racial discrimination and conflicted with the Congressional policy of ending the nation's housing shortage (Brief for Appellant before the Commonwealth Court of Pennsylvania at 17). Finally, as noted in the Commonwealth Court opinion, CHA raised the issue that the enforcement of the Commission's order would require it to leave dwelling units vacant while eligible tenant applicants were available and awaiting housing accommodations (Brief for Appellant before the Commonwealth Court of Pennsylvania at 17).

The Commonwealth Court found that the federal contentions of CHA did not require the reversal of the Commission's decision or all of its order. The Court held, however, that there was insufficient evidence to support certain of the Commission's findings of fact and the related portions of its final order. The Court therefore struck the following paragraphs from the order: (a) Paragraphs 2 and 3, quoted above, requiring the imposition of racial admissions priorities for CHA's four family housing projects, (b) Paragraph 4, requiring CHA to develop a program to change the racial composition of all of its projects, (c) Paragraph 8, requiring CHA to submit detailed monthly reports as to the racial recomposition of the projects, and (d) Paragraph 10 requiring CHA and the Chester School District to prepare a plan for priority selection of families with school age children to effect racial integration of the

Chester school system. The Commonwealth Court affirmed the order of the Human Relations Commission as so modified.

The portions of the Commission's order stricken by the Commonwealth Court were those raising the federal issues of conflict with federal legislation, regulations, and contractual requirements; unlawful and unconstitutional racial discrimination; and the creation of unnecessarily vacant housing units. Since the Court's decision on these matters was based upon insufficiency of the evidence, it did not decide the federal questions raised by these specific provisions of the Commission's order.

On July 5, 1973, the Commission filed, with the Supreme Court of Pennsylvania, a petition for allowance of appeal from the order of the Commonwealth Court, which petition was granted.

In the proceedings before the Supreme Court of Pennsylvania, CHA again presented all of the federal issues raised before the Commonwealth Court, in support of affirming the Commonwealth Court's decision. The Pennsylvania Supreme Court reversed the order of the Commonwealth Court and reinstated the Commission's order in full.

In its opinion the Supreme Court of Pennsylvania considered the federal issues of this case at great length. More than half of the opinion (App. A7-A8, A10-A19) is a discussion of the effects of federal housing and anti-discrimination laws, regulations, and HUD directives, and the equal protection clause of the fourteenth amendment of the United States Constitution. There is extensive citation of decisions of this Court and lower federal courts on each such issue. By reinstating those portions of the Commission's order stricken by the Commonwealth Court, the Pennsylvania Supreme Court decided each of these federal issues adversely to CHA.

With respect to the limited question of CHA's "compliance" with federal mandates, the Pennsylvania Supreme Court stated that the issue was decided adversely by the Commonwealth Court, and since CHA did not appeal it was bound by that decision. This issue, however, was only a small part of CHA's federal argument, and is of little, if any, significance to this Petition. The actual holding of the Commonwealth Court as to the specific paragraphs of the Commission's order reinstated by the Pennsylvania Supreme Court was based upon insufficiency of the evidence, not CHA's federal arguments, and was decided in favor of, not adversely to, CHA. In any event, the Pennsylvania Supreme Court did in fact pass on this aspect of the federal issue and quoted at length from the opinion of the Commonwealth Court, thus affirming that part of the decision (App. A18-A19).

After careful examination of the Commission's order, as affirmed by the state Supreme Court, CHA determined, after all necessary administrative action, to engage independent counsel to obtain review of the decision of the Supreme Court of Pennsylvania. Pursuant to such undertaking, undersigned counsel was engaged by CHA on November 14, 1974. Under Rule 64 of the Rules of the Supreme Court of Pennsylvania, the time for filing a petition for rehearing in that Court expired on October 26, 1974. On November 25, 1974, counsel filed a petition for leave to file a petition for rehearing and for an extension of time therefor, which petition was denied by the Supreme Court of Pennsylvania on December 17, 1974.

VI. REASONS FOR GRANTING A WRIT OF CERTIORARI.

A. The Commission's Order Is an Impermissible Attempt, by a State Agency, Contrary to Federal Law and the United States Constitution, to Desegregate Federally Assisted Housing by Ordering Affirmative Discrimination Against Racial Minorities.

CHA operates four family housing projects. Three are predominantly Black and one predominantly White. The order of the Pennsylvania Human Relations Commission attempts to integrate these projects to reflect the racial composition of all public housing in the city of Chester—approximately 64% Black and 36% White. The means of integration chosen, as set forth in Paragraphs 2 and 3 of the Commission's order, is a tenant selection priority system based entirely upon the race of the applicant. No Whites may be admitted to the predominantly White project and no Blacks to the three predominantly Black projects until the desired racial balance is achieved. Such racial recomposition of the projects will be a very long process, if it occurs at all. It will require vacation and reoccupancy of more than five hundred dwelling units, almost one-half of all family public housing in Chester, and Whites, who constitute only one-third of the public housing community, must fill more than three hundred of such units. Until that time, no Black tenant applicant, regardless of his housing needs or the availability of vacancies, may be admitted to three of Chester's four housing projects.

By requiring the implementation of this system, the Pennsylvania Human Relations Commission and the Supreme Court of Pennsylvania have ordered the Chester Housing Authority to deny admission in 75% of the avail-

able housing facilities to 64% of the applicants for public housing, regardless of any extenuating circumstances or other considerations, solely because they are Black. CHA submits such direct racial discrimination against minorities is not a permissible means of desegregating federally-assisted housing.

1. The Commission's Order, as Affirmed by the Pennsylvania Supreme Court Raises Important Questions of the Permissibility of Discriminating Against Racial Minorities to Desegregate Federally-Assisted Housing.

This case presents the basic issue of the limits upon the permissible action which may be taken by a governmental agency to achieve racial balance within a particular social structure. This question has received careful consideration by this Court, primarily with respect to the desegregation of school systems. *Brown v. Board of Education*, 349 U. S. 294 (1955); *Green v. County School Board*, 391 U. S. 430 (1968); *Swann v. Charlotte-Mecklenburg Board of Education*, 402 U. S. 1 (1971). It has also been the subject of extensive litigation in lower federal courts, even within the more limited context of federally-assisted housing. See *e.g. Otero v. New York Housing Authority*, 484 F. 2d 1122 (2d Cir. 1973); *Shannon v. United States Department of Housing and Urban Development*, 436 F. 2d 809 (3rd Cir. 1970); *Gautreaux v. Chicago Housing Authority*, 480 F. 2d 210 (7th Cir. 1973); *Blackshear Residents' Organization v. Housing Authority of City of Austin*, 347 F. Supp. 1138 (W. D. Tex. 1971).

This case, however, presents a far more compelling issue than the above-cited decisions. This is not, as in the school desegregation cases, a question of racial redistribution in order to achieve integration, nor as in *Otero*,

an issue of competing priorities for reallocation of housing tenants, involving questions of the desirability of specific housing sites. The Commission's order specifically directs CHA to refuse to admit Black tenants to three of its four family housing projects. The method chosen by the Commission to achieve integration, and affirmed by the Pennsylvania Supreme Court, is the denial of governmental benefits entirely on the grounds of race. This is the same issue upon which this Court granted *Certiorari* in *DeFunis v. Odegaard*, — U. S. —, 40 L. Ed. 2d 164 (1974), but did not reach because the case had become moot.

CHA submits that the facts of this case are more compelling than those of *DeFunis*. In *DeFunis*, the issue presented was the permissibility of racial discrimination in favor of minorities in order to achieve racial balance. The order of the Pennsylvania Human Relations Commission, on the other hand, presents a scheme of desegregation which discriminates against the racial minority that it is supposed to benefit. Further, the issue of this case is not, as in *DeFunis*, the denial of admission to a specific state law school in a particular year, significant as that may be; it is rather the discriminatory denial of one of the most basic necessities of life—safe and decent shelter.

CHA respectfully submits that not only, as discussed below, is the Commission's order unlawful and unconstitutional, but that the federal statutory and constitutional issues raised by the racial discrimination ordered by the Commission are vitally important and should be considered by this Court. As Mr. Justice Brennan stated in his dissenting opinion in *DeFunis*:

> Few constitutional questions in recent history have stirred as much debate, and they will not disappear. They must inevitably return to the federal courts and ultimately again to this Court. 40 L. Ed. 2d at 188.

2. The Commission's Order Unconstitutionally and Unlawfully Requires CHA to Discriminate Against Racial Minorities in the Allocation of Federally-Assisted Housing.

Paragraphs 2 and 3 of the Commission's order direct CHA to implement a program of tenant selection based entirely upon race, denying access to three-quarters of CHA's family housing projects to eligible Black applicants because of their race. By proceeding in accordance with that order, CHA will be in violation of every level of federal directive to which it is subject.

The statutory violations are both numerous and clear. Section 1 of the Civil Rights Act of 1866, 42 U. S. C. § 1982, provides:

> All citizens of the United States shall have the same right, in every state and territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property.

In *Hurd v. Hodge*, 334 U. S. 24 (1948) this Court held that whenever a Black citizen is denied the opportunity to obtain benefits of real estate solely because of his color, there has been a violation of Section 1 of the Civil Rights Act of 1866. Further, in *Jones v. Alfred H. Mayer Co.*, 396 U. S. 409 (1968) this Court found that when Congress, in Section 1 of the Civil Rights Act of 1866, provided:

> [T]hat the right to purchase and lease property was to be enjoyed equally throughout the United States by Negro and white citizens, it plainly meant to secure that right against interference from any source whatever, whether government or private. 392 U. S. at 423.

Paragraphs 2 and 3 of the Commission's order direct CHA to do precisely what Congress and this Court have stated

is prohibited. These provisions of the order require, in clear and direct terms, that CHA deny Black citizens the same right to lease and hold real estate as is available to White citizens.

Similarly, Section 601 of the Civil Rights Act of 1964, 42 U. S. C. § 2000d; Section 804(a) of the Fair Housing Act of 1968, 42 U. S. C. § 3604(a); and Section 109(a) of the Housing and Community Development Act of 1974, Pub. L. 93-383, 88 Stat. 633, prohibit exactly the same racial discrimination ordered by the Commission.

By regulations issued under Title VI of the Civil Rights Act of 1964, HUD has prohibited any racial discrimination by local housing authorities, 24 C. F. R. § 1.4, and the utilization of any criteria or methods of administration for the provision of housing or accommodations "which have the effect of subjecting persons to discrimination because of their race, color, or national origin." 24 C. F. R. § 1.4(b)(2)(i). Federal anti-discrimination requirements are also set forth in HUD Circulars relating to tenant selection, and Part 1, Section 14(A) of CHA's Annual Contributions Contract imposes non-discrimination requirements on CHA as a contractual mandate and provides that failure to comply constitutes a substantial default.

Clearly, the order of the Pennsylvania Human Relations Commission has directed CHA to implement a program of racial discrimination which the federal judiciary, legislature, and executive departments have prohibited in almost every conceivable manner.

The implementation of Paragraphs 2 and 3 of the Commission's order would further be an unconstitutional denial of equal protection of the laws. These provisions of the order require a classification of applicants for public housing and the grant or denial, by a state agency, of

housing accommodations solely on the basis of race. There is no room for any other consideration, nor is there any relationship between the racial classification of applicants and the housing needs which CHA was created to provide. CHA must deny housing to eligible Black applicants in three of its four family projects only because the applicant is Black. Such racial discrimination is clearly prohibited by the equal protection clause of the fourteenth amendment. *Bolling v. Sharpe*, 347 U. S. 497 (1954); *Loving v. Virginia*, 388 U. S. 1 (1967): *DeFunis v. Odegaard*, — U. S. —, 40 L. Ed. 2d 164, 171 (1974) (Douglas, J. dissenting).

The opinion of the Supreme Court of Pennsylvania examines, at great length, decisions of this Court and lower federal courts concerning the application of the equal protection clause to efforts to eliminate racial imbalances (App. A8, A10-A18). These decisions, however, do not deal with the situation presented by this case. None concern the constitutional permissibility of an attempt to achieve integration by imposing a strict racial classification, with room for no other consideration, in a governmental program as significant as the provision of basic housing needs. Certainly none involve a program of direct discrimination against the racial minority which the desegregation plan is intended to aid.

Both the Commonwealth Court and Supreme Court of Pennsylvania suggest that the discriminatory practices imposed by the Commission's order can be supported by a compelling state interest. Clearly there is no justification for such a position. As Mr. Justice Douglas stated in his dissenting opinion in *DeFunis*,

> If discrimination based on race is constitutionally permissible when those who hold the reins can come up with "compelling" reasons to justify it, then constitutional guarantees acquire an accordionlike quality. 40 L. Ed. 2d at 184.

This is not a case of state economic or similar regulation, requiring a consideration of various state interests. It is rather a case of racial discrimination in providing the basic human necessity of shelter. See *Shelley v. Kraemer*, 334 U. S. 1 (1948). A state agency's theory of the proper tenant composition of federally-assisted housing cannot sustain such a system of discrimination. As Mr. Justice Douglas has stated:

> The Equal Protection Clause commands the elimination of racial barriers, not their creation in order to satisfy our theory as to how society ought to be organized. *DeFunis v. Odegaard*, 40 L. Ed. 2d at 183. (Douglas, J., dissenting).

Paragraphs 2 and 3 of the Commission's order impose a system of racial classification and discrimination against racial minorities under which CHA is required to violate the United States Constitution, federal statutes and regulations, and its Contract with the United States. As discussed in detail below, the Supremacy Clause of the United States Constitution, Article VI, Clause 2, prohibits any such action by any state agency. Equally important, these provisions of the Commission's order are clearly illegal and unconstitutional, and their affirmance by the Supreme Court of Pennsylvania is contrary to the applicable decisions of this Court.

B. The Commission's Order Is in Direct Conflict and Interferes With the Housing Policy, Legislation, and Regulations of the United States.

The Commission's order, and particularly Paragraphs 2 and 3, require CHA to establish a system of allocation of its limited federally-funded housing resources with an absolute first priority in tenant selection based entirely

upon the race of the applicant. This priority and allocation system is in direct conflict with the clear congressional policy of housing allocation and the statutes and regulations implementing that congressional decision. As a result, the state action, as embodied in the Commission's order must, under the Supremacy Clause of the United States Constitution, Article VI, Clause 2, yield to federal enactments and is void.

The Supremacy Clause of the Constitution absolutely requires that federal enactments supersede conflicting state action. This has been established since the earliest days of this country. *M'Culloch v. Maryland*, 4 Wheat. 316, 426 (1819); *Gibbons v. Ogden*, 9 Wheat. 1, 210-211 (1824), and has been consistently reaffirmed by this Court. *Florida v. Mellon*, 273 U. S. 12, 17 (1927); *Kalb v. Feuerstein*, 308 U. S. 433, 439 (1940); *Weber v. Anheuser-Busch*, 348 U. S. 468, 480 (1955); *Sperry v. Florida*, 373 U. S. 379 (1963). The decisions of this Court preclude any argument, as suggested by the Commonwealth Court in this case (App. A32), that the state's interest in the subject matter is more compelling and more important than the federal interest. The importance to the state of the exercise of its own powers is totally immaterial—federal law must prevail. *Cleveland v. United States*, 323 U. S. 329 (1945); *Free v. Bland*, 369 U. S. 663, 666 (1962); *Maryland v. Wirtz*, 392 U. S. 183, 195 (1968).

Further, federal supremacy is not limited to the United States Constitution or federal statutes. It applies with equal force to federal regulations, *Sperry v. Florida*, 373 U. S. 379 (1973), and policy, *Anderson v. Abbott*, 321 U. S. 349 (1944); *United States v. Georgia*, 371 U. S. 285, 292-293 (1963). The supremacy clause prohibits a state from regulating the activities of the federal government, *Mayo v. United States*, 391 U. S. 441 (1943) or imposing any condi-

tion upon which the federal government may effectuate its policy, *United States v. Georgia*, *supra*, and a state may not establish its own concept of eligibility in federally assisted programs, in conflict with federal enactments. *King v. Smith*, 392 U. S. 309 (1968).

CHA submits that the order of the Pennsylvania Human Relations Commission is in direct conflict with federal housing policy, legislation, and regulations governing allocations of housing resources and priorities of tenant selection. The affirmance of that order by the Pennsylvania Supreme Court squarely conflicts with the applicable decisions of this Court.

1. The Commission's Order Imposes a Priority System for Admission to Federally-Assisted Housing in Direct Conflict With Federal Policy, Legislation, and Regulation.

From the initial enactment of the United States Housing Act of 1937, and continuously thereafter, Congress has recognized the "acute shortage of decent, safe, and sanitary dwellings for families of low income." United States Housing Act of 1937, September 1, 1937, c. 896, 50 Stat. 888, § 1. This Congressional concern for the housing shortage has been continuously restated, in the same words, throughout the revisions of the United States Housing Act of 1937, as amended through 1974, 42 U. S. C. § 1401. Precisely the same language was again retained in the Housing and Community Development Act of 1974, Pub. L. 93-383, 88 Stat. 633, § 201(a), providing for Section 2 of the Housing Act of 1937, as amended. Similarly, Congress, in 1968, found that "the supply of the nation's housing is not increasing rapidly enough to meet the national housing goal." 42 U. S. C. § 1441(a). This same language was retained by

Section 801 of the Housing and Community Development Act of 1974.

To meet this housing shortage, Congress, by the Housing Act of 1937, provided for the establishment of low income housing by federally-funded local housing agencies and a system of allocation of the housing resources thus made available. The selection and admission priorities and allocation procedures so established are reflected throughout the scheme of federal directives governing the administration of federally assisted housing under the Housing Act of 1937. Section 10(g)(2) of that statute, as amended through December 31, 1974, and effective at the time of the decision of the Pennsylvania Supreme Court in this case, required the local housing agency to adopt admissions policies giving full consideration to the rehousing of displaced families, an applicant's status as a veteran or disabled veteran, and an applicant's age, disability, housing conditions, urgency of housing need, source of income, family status, and other factors related to the purposes to be served by the statute.

Although the Housing and Community Development Act of 1974 eliminated the more specific priorities of the previous versions of the 1937 Act, it retained the concept of allocating housing and granting applicants priority based on consideration of housing need, economic status, and similar matters related to the purposes of the Act. Under the new law, local housing authorities must still consider an applicant's veteran status, family status, age, and disability. Section 3, United States Housing Act of 1937, as amended by Section 201(a), Housing and Community Development Act of 1974. Particular emphasis is placed upon the income range of applicants and the ultimate relationship of various income groups among public housing tenants, housing needs, and social problems. Section 6

(c)(4)(A), United States Housing Act of 1937, as amended by Housing and Community Development Act of 1974.

The Annual Contributions Contract between CHA and the United States reflects the tenant priority and housing allocation system chosen by Congress. Section 209 of the Contract restates, in more detail, the requirements of Section 10(g)(2) of the Housing Act of 1937. Similarly, HUD Circular RHA 7401.1, which has the effect of law, *Thorpe v. Housing Authority of the City of Durham*, 386 U. S. 670 (1970), and the HUD directive as to the choice of plans for tenant selection, as well as the plans themselves, require the establishment of a system of housing allocation and tenant selection based upon considerations of the availability of housing, the applicant's need, and other factors relating to the purposes for which housing agencies such as CHA exist.

All aspects of the federal allocation and priority system, including Congressional policy, legislation, HUD regulations, and the Contract, have at least one factor in common—there is no consideration whatever given to the race of the applicant. As discussed previously, numerous federal statutes, regulations, and other directives affirmatively prohibit allocation of federally assisted housing resources based on the race of the applicant. The United States has rather required that the limited federally funded housing be allocated on the basis of factors which, unlike the race of the applicant for housing, are related to the purposes of the federal legislation.

In direct conflict with this mandate, the Pennsylvania Human Relations Commission has ordered CHA to disregard completely all federal policy, legislation, and regulation as to the allocation of housing and priority in tenant selection in order to establish an admission program based upon race—the one factor which the United States has

specifically prohibited CHA from considering. As a result, the Commission, a state agency, has attempted to establish its own eligibility system for federally-assisted programs in conflict with federal enactments. This Court has clearly held that such state action is invalid and unconstitutional. *King v. Smith, supra.*

2. The Commission's Order, in Conflict With Congressional Policy and Legislation, Requires CHA to Leave Vacant Needed and Available Federally-Assisted Housing.

Paragraphs 2 and 3 of the Commission's order absolutely prohibit CHA from renting any dwelling unit in three of its four family housing projects to a Black applicant until such time as each of these projects achieves a stated racial composition. As previously noted, this situation will exist for a very substantial period of time, if not indefinitely, because of the massive reconstitution of dwelling units required, and limited number of eligible Whites in the Chester public housing community. As a result, vacancies in these projects must remain unoccupied until a qualified White tenant is found, notwithstanding the fact that eligible Black tenant applicants, who represent two-thirds of the public housing tenants in Chester, are in need of that housing. However large the number of eligible Black tenant applicants, whatever their housing needs, age, disability, or family status, the Commission's order requires that the unit remain vacant until CHA finds an eligible White tenant. Such an allocation program is in direct conflict with the housing policy of the United States.

In virtually every federal housing statute, Congress has made clear that it is the policy of the United States to provide safe, decent, and sanitary housing for all Americans, and particularly low income families who cannot

otherwise afford such dwelling facilities. United States Housing Act of 1937, as amended through December 31, 1974, § 1, 42 U. S. C. § 1401; Housing and Urban Development Act of 1968, Title XIV, § 1601, 42 U. S. C. 1441(a); Housing and Community Development Act of 1974, Pub. L. 93-383, 88 Stat. 633, §§ 101, 201, and 801. Congress has recognized the particular importance of this goal in view of the "acute shortage" of acceptable housing. The Congressional policy is thus fundamentally to provide the basic necessity of a decent home and suitable living environment for all Americans.

It is self-evident that any housing allocation program which leads to the maintenance of vacancies while qualified tenants are available is directly contrary to this Congressional policy. In amended Section 6(c)(4)(A) of the United States Housing Act of 1937, promulgated by the Housing and Community Development Act of 1974, Congress has directed that every annual contributions contract provide for the establishment of tenant selection criteria which will assure a broad range of income groups among public housing tenants. The same section of the statute specifically states, however, that "this shall not permit maintenance of vacancies to await higher income tenants where lower income families are available." Clearly, Congress has determined that any allocation of housing resources which creates unnecessary vacancies of available dwelling units, even one reflecting the primary economic considerations of the legislation, is contrary to the housing policy of the United States and prohibited.

The order of the Pennsylvania Human Relations Commission specifically requires that CHA deny admission to dwelling units to qualified applicants in need of housing, even though those units are vacant and available for occupancy. Not only is this contrary to Congressional policy

and legislation, but it is an attempt to promulgate an allocation program which creates precisely the situation which Congress has attempted to prevent. The unconstitutional and illegal denial of federally-funded housing to Black applicants merely because they are Black is even more untenable when housing accommodations are available and remain vacant.

Paragraphs 2 and 3 of the Commission's order are thus an attempt by a state agency to impose a condition upon which the United States government may exercise its policies, and an attempt to exercise state power to defeat the policy underlying federal statutes. As this Court has plainly held, any such action is unconstitutional and invalid. *United States v. Georgia*, *supra* at 292-293; *Anderson v. Abbott*, *supra* at 365. The affirmance of the order by the Supreme Court of Pennsylvania, once again, squarely conflicts with the applicable decisions of this Court.

VII. CONCLUSION.

For all of the foregoing reasons, Petitioner Chester Housing Authority respectfully submits that this Court should grant this Petition for a Writ of Certiorari to review the decision of the Supreme Court of Pennsylvania.

Respectfully submitted.

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CERTIFICATE OF SERVICE.

I hereby certify that on this 13th day of January, 1975, three copies of this Petition for a Writ of Certiorari were hand delivered to the Philadelphia office of Sanford Kahn, Esquire, attorney for Respondent, at 1400 Spring Garden Street, Philadelphia, Pennsylvania 19130, and that three copies of this Petition for a Writ of Certiorari were mailed, first class mail, postage prepaid, to the Harrisburg office of Sanford Kahn, Esquire, 100 North Cameron Street, Harrisburg, Pennsylvania 17101, by depositing them with the United States Post Office at 123 South Broad Street, Philadelphia, Pennsylvania.

I further certify that all parties required to be served have been served.

HAROLD CRAMER,
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Philadelphia, Pennsylvania. 19109
Attorney for Petitioner.

APPENDIX A.

OPINION OF THE SUPREME COURT OF PENNSYLVANIA.

IN THE

Supreme Court of Pennsylvania

EASTERN DISTRICT.

No. 41 JANUARY TERM, 1974.

PENNSYLVANIA HUMAN RELATIONS COMMISSION,

Appellant,

v.

CHESTER HOUSING AUTHORITY.

APPEAL FROM THE ORDER OF THE COMMONWEALTH COURT, AT NO. 506 C. D. 1972, MODIFYING THE ORDER OF THE PENNSYLVANIA HUMAN RELATIONS COMMISSION, DATED APRIL 24, 1972 AT DOCKET NO. H-1395.

OPINION OF THE COURT.

ROBERTS, *J.* Filed: October 16, 1974

The Pennsylvania Human Relations Commission appeals from the order of the Commonwealth Court affirming with modification a unanimous Commission order. *Chester Housing Authority v. Human Relations Commission*, 9 Pa. Commonwealth Ct. 415, 305 A. 2d 751 (1973). The Commission had ordered the Chester Housing Authority, inter alia, to take affirmative steps to remedy racial segregation

found by the Commission to exist in four public housing projects administered by the Authority. Because the Commonwealth Court concluded that two of the Commission's findings of fact were not supported by substantial evidence, it held unenforceable certain parts of the Commission's order. The Commission sought review of the Commonwealth Court's modification and we granted the petition for allowance of appeal.[2] We agree with the Commission that the record contains substantial evidence supporting its adjudication. We therefore reinstate those portions of the Commission's order stricken by the Commonwealth Court, and affirm that court's order so modified.

On May 1, 1970, the Commission filed a complaint alleging that the Authority maintained under its supervision four housing projects that were racially segregated in violation of section 5(h) of the Pennsylvania Human Relations Act.[3] It was also charged that actions of the Authority aided and abetted racial segregation of public schools in the City of Chester and therefore contravened section 5(e) of the Act.[4] The Commission then by investi-

1. An appellate court is empowered to set aside or modify the Commission's adjudication when, inter alia, the findings of fact supporting the adjudication are "not supported by substantial evidence." Administrative Agency Law, Act of June 4, 1945, P. L. 1388, § 44, 71 P. S. § 1710.44 (1962). See *Pennsylvania Human Relations Comm'n v. Chester School Bd.*, 427 Pa. 157, 181, 233 A. 2d 290, 302-03 (1967).

2. Appellate Court Jurisdiction Act of 1970, Act of July 31, 1970, P. L. 673, art. II, § 204(a), 17 P. S. § 211.204(a) (Supp. 1974).

3. Act of October 27, 1955, P. L. 744, § 5(h), as amended, 43 P. S. § 955(h) (Supp. 1974).

4. Section 5(e) makes it an unlawful discriminatory practice "[f]or any person . . . to aid, abet, compel or coerce the doing of any act declared by this section to be an unlawful discriminatory practice, or to obstruct or prevent any person from complying with the provisions of this act or any order issued thereunder, or to attempt, directly or indirectly, to commit any act declared by this section to be unlawful discriminatory practice." 43 P. S. § 955(e) (1964).

gation determined that probable cause existed for crediting the allegations in its complaint.[5]

As part of its investigation, the Commission obtained the names of all persons who became tenants in the four projects from January, 1970 to May, 1971. From a list of present tenants a random selection of names was made. The sample revealed seventeen incidents of racial discrimination on the part of the Authority in the leasing of apartments. The incidents were scattered throughout the test period, and each example showed the same practice. When a black prospective tenant applied, he would be denied housing until a vacancy arose in a "black" project, even though there existed a vacancy in the "white" project.[6] Likewise, a white prospective tenant would not be offered an available apartment in a "black" project, but would rather be kept waiting until a vacancy occurred in the "white" project.

After an August 5, 1971 public hearing the Commission entered a unanimous adjudication containing ten compound findings of fact[7] and five conclusions of law.[8] The Commission accepted as true the proof of the seventeen individual acts of discrimination. It further found that as a result of a pattern of discrimination, the four projects in question were racially segregated. The findings continue by stating that the racial imbalance of these four projects

5. 43 P. S. § 959 (Supp. 1974). In compliance with the statutory directive, the Commission sent a letter together with its complaint to the chairman of the Authority, notifying him of the pending public hearing.

No challenge before either the Commission, the Commonwealth Court, or this Court has been made by the Authority to the procedure used by the Commission.

6. For the racial composition of the four projects, see text accompanying note 14 infra.

7. The complete findings of fact of the Commission are set out in Appendix A.

8. See Appendix B.

increased the racial segregation of Chester public schools.[9] On the basis of these findings and the conclusions of law, the Commission ordered the Authority to cease and desist from its present tenant selection procedure and to affirmatively remedy the existing racial imbalance.[10]

The Authority excepted to almost every finding of fact, conclusion of law, and portion of the order, and took a timely appeal to the Commonwealth Court. After reviewing the evidence the lower court concluded that substantial evidence demonstrated "that certain tenants had been routed through [the Authority's] tenant placement procedure into projects whose tenant majority (usually entirely) corresponded to the tenants' race." 9 Pa. Commonwealth Ct. at 424, 305 A. 2d at 755.[11] However, the Commonwealth Court did not affirm the Commission's order in toto, but rather set aside portions of it. Stricken from the order were the paragraphs directing the Authority to cease renting apartments in the "black" projects to blacks and in the "white" projects to whites until the racial composition in each reflected the overall racial composition in Chester's public housing; to design, have approved by the Commission, and implement a plan to bring about this uniform racial composition; to make monthly reports for two years to the Commission on the progress of the approved plan; and to meet with the Chester School District to draft a plan for the priority placement of tenants with school-

9. See text accompanying note 30 infra.

10. See Appendix C.

11. The Commonwealth Court also concluded:

"[S]ufficient competent evidence was adduced to sustain the Commission's findings that particular tenants, both black and white, were refused housing due to racial considerations because [the Authority] had failed to offer available space, regardless of location, to a top priority tenant when it should have done so, regardless of race considerations."

9 Pa. Commonwealth Ct. at 424, 305 A. 2d at 756 (emphasis deleted).

age children in the to-be-integrated projects. Only the Commission appealed.[12]

Despite its agreement with the Commission's proof of racial discrimination, the Commonwealth Court believed that these violations of the Human Relations Act did not justify the Commission's order. Two complaints were voiced. The Commission had neither proved the duration of the unlawful discriminatory practices nor shown that these seventeen acts were the sole cause of the racial imbalance.[13] Aside from noting that the Human Relations Act does not explicitly require either that a particular number of acts must be proved or that race must be the sole factor in bringing about discrimination before the Commission may order affirmative action, 43 P. S. §959 (Supp. 1974), we find it unnecessary to address these assertions of the lower court. In our view, substantial evidence supporting the Commission's adjudication can be found in the figures of the racial composition of the four housing projects.

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12. By not taking an appeal from the order of the Commonwealth Court, the Authority is precluded from raising issues decided adversely to it by that court. *Pennsylvania Human Relations Comm'n v. Alto-Reste Park Cemetery Ass'n*, 453 Pa. 124, 128-29 n. 5, 306 A. 2d 881, 884 n. 5 (1973). See also *Cash's Appeal*, 1 Pa. 166 (1845).

13. The opinion of the Commonwealth Court is less than clear on this score, and it arguably supports another interpretation. The concern in that court perhaps was that the Commission had not established that racial discrimination proved by the Commission was in any way a cause of the de facto segregation of Chester's housing projects. If this is the correct interpretation, we find it somewhat incredible. The Commonwealth Court agreed that sufficient evidence showed "that certain tenants had been routed through [the Authority's] tenant placement procedure into projects whose tenant majority (usually entirely) corresponded to the tenants' race." 9 Pa. Commonwealth Ct. at 424, 305 A. 2d at 755. Human experience and common sense dictate that when a landlord routes blacks into all black projects and whites into all white projects, the result is racial segregation.

Evidence of the racial composition of the four housing projects was introduced without objection and has never been challenged. The figures amply demonstrate racial imbalance.[14]

	White Tenants	Black Tenants
Lamokin Village	0	346
McCaffery Village	347	0
Ruth L. Bennett Homes	0	385
William Penn Village	20	257

These statistics paint as vivid a picture of racial segregation as can be imagined. Two projects were occupied 100% by blacks, another almost 100%, and apartments in a fourth were occupied exclusively by whites.

Further testimony at the public hearing revealed this almost-100% segregation to be a long-standing pattern.[15]

14. See *Balsbaugh v. Rowland*, 447 Pa. 423, 434-35 n. 6, 290 A. 2d 85, 91 n. 6 (1972); *Pennsylvania Human Relations Comm'n v. Chester School Dist.*, 427 Pa. 157, 158-59 n. 1, 233 A. 2d 290, 291 n. 1 (1967).

In our view, racial imbalance means substantial statistical disparity."

15. In its brief to this Court, the Authority concedes that the present racial imbalance in the four projects was purposefully caused.

> "The obviously imbalanced patterns of occupancy and site selection were brought about in large measure through the conscious design of the Federal and State governments. The result has been that various projects historically have been identified as Black or White. The Federal and State governments were knowing and willing partners in pursing a policy which created the imbalance from 1938 until 1968."

Brief for Appellee at 13.

The Authority tries to absolve itself from responsibility to end the admitted segregation by arguing that other organs of government, not it, were responsible. We do not address the question to what extent one agency of the state is responsible to undo the unlawful acts of another, because we rest our decision on the existence of de facto segregation. Cf. *Banks v. Perk*, 341 F. Supp. 1175, 1184 (N. D. Ohio 1972). But cf. *Mayor v. Educational Equality League*, — U. S. —, —, 94 S. Ct. 1323, 1334 (1974); *Spomer v. Littleton*, — U. S. —, —, 94 S. Ct. 685, 689-90 (1974).

The manager of the Ruth Bennett project testified that to his knowledge there had never been a white tenant there. Similarly, the manager of Lamokin Village stated that the six years from 1964 to 1970 never saw a white occupy an apartment there. Since at least 1956, the William Penn project, according to its manager, maintained approximately the same racial composition as that existing in 1969. Except for a few black families living there at some unspecified time in the past, McCaffrey has always been occupied exclusively by whites.

Nearly identical statistics were before this Court in *Pennsylvania Human Relations Commission v. Chester School District*, 427 Pa. 157, 233 A. 2d 290 (1967). There, we upheld an extensive Commission order designed to desegregate Chester's public schools. Necessarily, we held that the Human Relations Act reached the problem of de facto segregation.

> "Had the Legislature intended to reach by the 1961 amendments only de jure segregation, its legislative pronouncements would have been unnecessary. The 1954 *Brown* [16] decision made it eminently clear that de jure segregation—racial isolation produced by the acts of public officials—is unconstitutional. A legislative pronouncement to this effect, and this effect only, would be mere gild on the lily."

Id. at 169, 233 A. 2d at 296.

This Court has not hesitated to follow the implications of *Chester School District*. In *Balsbaugh v. Rowland*, 447 Pa. 423, 290 A. 2d 85 (1972), we were asked to decide the constitutionality vel non of an affirmative action plan initiated by the Harrisburg School District in part to correct

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16. *Brown v. Board of Educ.*, 347 U. S. 483, 74 S. Ct. 686 (1954).

de facto segregation in its schools. We concluded that corrective measures, including pupil assignment and bussing, were constitutionally permissible means of overcoming segregation whether de jure or de facto. Id. at 436-39, 290 A. 2d at 92-93. And in school segregation situations [17] the Commonwealth Court has sedulously enforced the rights announced in our decisions. *Philadelphia School District v. Human Relations Commission*, 6 Pa. Commonwealth Ct. 281, 294 A. 2d 410 (1972), aff'd sub nom. *Uniontown Area School District v. Pennsylvania Human Relations Commission*, 455 Pa. 52, 313 A. 2d 156 (1973) (upholding Commission order directing five school districts to remedy de facto segregation).

While these cases arose in the context of racially segregated schools, the statutory scheme does not treat housing

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17. Other jurisdictions have upheld policies designed to eradicate de facto segregation in public schools. See, e.g., *Guida v. Board of Educ.*, 26 Conn. App. 121, 213 A. 2d 843 (Sup. Ct. 1965); *Booker v. Board of Educ.*, 45 N. J. 161, 212 A. 2d 1 (1965); *Morean v. Board of Educ.*, 42 N. J. 237, 200 A. 2d 97 (1964); *Addabbo v. Donovan*, 16 N. Y. 2d 619, 209 N. E. 2d 112, 261 N. Y. S. 2d 68, cert. denied, 382 U. S. 905, 86 S. Ct. 241 (1965); *Vetere v. Allen*, 15 N. Y. 2d 259, 206 N. E. 2d 174, 258 N. Y. S. 2d 77, cert. denied, 382 U. S. 825, 86 S. Ct. 60 (1965); *State ex rel. Citizens Against Mandatory Bussing v. Brooks*, 80 Wash. 2d 121, 492 P. 2d 536 (1972).

Similarly, federal courts have approved affirmative action by school boards designed to achieve integration. E.g., *Deal v. Cincinnati Bd. of Educ.*, 369 F. 2d 55, 61 (6th Cir. 1966), cert. denied, 389 U. S. 847, 88 S. Ct. 39 (1967) (dictum); *Wanner v. County Board*, 357 F. 2d 452 (4th Cir. 1966); *Springfield School Comm. v. Barksdale*, 348 F. 2d 261 (1st Cir. 1965); *Norwalk* CORE *v. Board of Educ.*, 298 F. Supp. 213 (D. Conn. 1969); *Offermann v. Nitkowski*, 248 F. Supp. 129 (W. D. N. Y. 1965), aff'd, 378 F. 2d 22 (2d Cir. 1967); *Hobson v. Hansen*, 269 F. Supp. 401 (D. D. C. 1967), aff'd sub nom., *Smuck v. Hobson*, 408 F. 2d 175 (D. C. Cir. 1969) (en banc). Cf. *Lee v. Nyquist*, 318 F. Supp. 710 (W. D. N. Y. 1970), aff'd 402 U. S. 935, 91 S. Ct. 1618 (1971). See also *Keyes v. School Dist. No. 1*, 413 U. S. 189, 93 S. Ct. 2686 (1973); *Brown v. Board of Educ.*, 349 U. S. 294, 75 S. Ct. 753 (1955).

differently from schooling for purposes of ending racial discriminations.

> "The opportunity for an individual . . . to obtain all the accommodations, advantages, facilities and privileges . . . of commercial housing without discrimination because of race . . . [is] declared to be [a] civil [right] . . . ."

43 P. S. § 953 (Supp. 1974).

Removal of racial discrimination and assurance of equal opportunity in housing are strong and fundamental policies of this Commonwealth. The Human Relations Act's declaration of policy makes this explicit.

> "The denial of equal . . . housing . . . opportunities because of [racial] discrimination . . . threaten[s] the peace, health, safety and general welfare of the Commonwealth and its inhabitants."

43 P. S. § 952(a) (Supp. 1974). In *Chester School District*, we reasoned that racial imbalance triggered the Commission's authority under the Human Relations Act to order affirmative action because to hold otherwise would ignore "completely the legislative conclusion that racial segregation in public schools, whatever its source, threatens 'the peace, health, safety and general welfare of the Commonwealth and its inhabitants.' " 427 Pa. at 170, 233 A. 2d at 297. Today we reach a similar conclusion with respect to racial imbalance in housing covered by the Act. Mindful of our statutory duty to construe the provisions of the Human Relations Act "liberally for the accomplishment of [its] purposes," 43 P. S. § 962(a) (1964), we conclude the purposes of the Act would be vindicated only by holding, see *Chester School District*, that the Act covers de facto segregation in housing.

Courts have resolved that blacks (and other minority groups[18]) are entitled to a meaningful opportunity to live in integrated housing.[19] *Otero v. New York Housing Authority*, 484 F. 2d 1122 (2d Cir. 1973), is instructive. The regulations of the New York Housing Authority required it to give preference in newly-built public housing to those residents whose homes had been destroyed in order to build that housing. The Authority sought to show that adherence to its regulations would result in the newly-built projects becoming segregated.[20] If the Authority did not have to

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18. Cf. *Hernandez v. Texas*, 347 U. S. 475, 74 S. Ct. 667 (1954). See also *United States v. Texas Educ. Agency*, 467 F. 2d 848, 862 n. 19 (5th Cir. 1972).

19. See, e.g., *Otero v. New York Housing Authority*, 484 F. 2d 1122 (2d Cir. 1973); *Gautreaux v. Romney*, 448 F. 2d 731 (7th Cir. 1971); *Shannon v. HUD*, 436 F. 2d 809 (3d Cir. 1970); *Blackshear Residents Org. v. Housing Authority*, 347 F. Supp. 1138 (W. D. Tex. 1971); *Banks v. Perk*, 341 F. Supp. 1175 (N. D. Ohio 1972); *Mahaley v. Cuyahoga Metro. Housing Authority*, 355 F. Supp. 1245, 1257 (N. D. Ohio 1973); *Crow v. Brown*, 332 F. Supp. 382 (N. D. Ga. 1971), aff'd, 457 F. 2d 788 (5th Cir. 1972); *Kennedy Park Homes Ass'n v. City of Lackawanna*, 318 F. Supp. 669 (W. D. N. Y.), aff'd, 436 F. 2d 108 (2d Cir. 1970), cert. denied, 401 U. S. 1010, 91 S. Ct. 1256 (1971); *Hicks v. Weaver*, 302 F. Supp. 619 (E. D. La. 1969); *Dailey v. City of Lawton*, 296 F. Supp. 266 (W. D. Okla. 1969), aff'd, 425 F. 2d 1037 (10th Cir. 1970); *Gautreaux v. Chicago Housing Authority*, 265 F. Supp. 582 (N. D. Ill. 1967) (ruling on motions and orders), 296 F. Supp. 907 (N. D. Ill. 1969) (memorandum opinion), 304 F. Supp. 736 (N. D. Ill.) (judgment order), aff'd, 436 F. 2d 306 (7th Cir. 1970), cert. denied, 402 U. S. 922, 91 S. Ct. 1378 (1971); *El Cortez Heights Residents & Property Owners Ass'n v. Tucson Housing Authority*, 10 Ariz. App. 132, 457 P. 2d 294 (1969); cf. *Trafficante v. Metropolitan Life Ins. Co.*, 409 U. S. 205, 93 S. Ct. 364 (1972) (standing). See generally Ackerman, Integration for Subsidized Housing and the Question of Racial Occupancy Controls, 26 Stan. L. Rev. 245 (1974); Comment, Toward Improved Housing Opportunities: A New Direction for Zoning Law, 121 U. Pa. L. Rev. 330 (1972).

20. The court supported its decision by reference to the much-commented-on "tipping point" phenomenon.

> "This gradual tendency of integrated areas to become more and more Negro is accentuated by the popular belief—often transmitted into action—that the rate at which white families move

abide by its regulations, the existing racial balance in the projects and the surrounding community area could be maintained. The district courts [21] held that the Authority had to comply with its regulations, but the United States Court of Appeals for the Second Circuit reversed. That court reasoned that the Authority's constitutional and statutory duty affirmatively to integrate public housing superseded its obligation to follow its own regulations.[22] Therefore,

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20. (Cont'd.)

out rises with the percentage of Negroes in the area, and, more important, that there exists a 'tipping point'—a given percentage of Negroes, after which the departure of whites from the areas will be greatly accelerated."

Kaplan, Equal Justice in an Unequal World—The Problem of Special Treatment, 61 Nw. U. L. Rev. 388, 390 (1966) (quoted in *Otero v. New York Housing Authority*, 484 F. 2d 1122, 1135 (2d Cir. 1973). See also *Gautreaux v. Chicago Housing Authority*, 296 F. Supp. 907 (N. D. Ill. 1969) (memorandum opinion), 304 F. Supp. 736 (N. D. Ill.) (judgment order), aff'd, 436 F. 2d 306 (7th Cir. 1970), cert. denied, 402 U. S. 922, 91 S. Ct. 1378 (1971). See generally Ackerman, Integration for Subsidized Housing and the Question of Racial Occupancy Controls, 26 Stan. L. Rev. 245, 251-70 (1974); Note, 85 Harv. L. Rev. 870, 875-76 (1972).

21. *Otero* was decided in two parts at the trial level, 354 F. Supp. 941 (S. D. N. Y. 1973) preliminary injunction granted), and 344 F. Supp. 737 (S. D. N. Y. 1972) (order).

22. Judge Mansfield, writing for the Second Circuit, analyzed that constitutional basis for the Authority's duty to integrate in this fashion.

"We agree with the parties and with the district court that the Authority is under an obligation to act affirmatively to achieve integration in housing. The source of that duty is both constitutional and statutory. Various discriminatory housing practices have been outlawed by judicial decree as violative of the Equal Protection Clause. An authority may not, for instance, select sites for projects which will be occupied by nonwhites only in areas already heavily concentrated with a higher proportion of non-whites. Shannon v. HUD, 436 F. 2d 809 (3d Cir. 1970), noted in 85 Harv. L. Rev. 870 (1972). A tenant assignment policy which assigns persons to a particular project because of the concentration of persons of his own race already residing at the project has been prohibited. Gautreaux v. Chicago Housing Authority, 296 F. Supp. 907, 304 F. Supp.

> "the Authority may limit the number of apartments to be made available to persons of white or non-white races, including minority groups, where it can show that such action is essential to promote a racially balanced community and to avoid concentrated racial pockets that will result in a segregated community."

Id. at 1140.

Crow v. Brown, 332 F. Supp. 382 (N. D. Ga. 1971), aff'd, 457 F. 2d 788 (5th Cir. 1972), involved a challenge to a plan to disperse public housing, which the court found to attract largely poor blacks, in areas outside Atlanta's ghettoes. The selected sites lay in Fulton County, unincorporated but subject to the jurisdiction of the Atlanta Housing Authority. Officials of Fulton County, who by various stratagems had frustrated the implementation of the plan, were held to have acted unconstitutionally. The heart of the district court's opinion is the thoughtful conclusion that

> "[f]or better or worse, both by legislative act and judicial decision, this nation is committed to a policy of balanced and dispersed public housing. . . . Among other things, this reflects the recognition that in the area of public housing local authorities can no more

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22. (Cont'd.)

736 (judgment order) (N. D. Ill. 1969), aff'd., 436 F. 2d 306 (7th Cir. 1970), cert. denied, 402 U. S. 922, 91 S. Ct. 1378, 28 L. Ed. 2d 661 (1971). An authority is barred from using assignment methods which seek to exclude, or have the evident effect of excluding, persons of minority races from residing in predominantly white areas or of restricting non-white to areas already concentrated by non-white residents. Crow v. Brown, 332 F. Supp. 382 (N. D. Ga. 1971), aff'd., 457 F. 2d 788 (5th Cir. 1972). Not only may such practices be enjoined, but affirmative action to erase the effects of past discrimination and desegregate housing patterns may be ordered."

Otero v. New York Housing Authority, 484 F. 2d 1122, 1133 (2d Cir. 1973).

> confine low-income blacks to a compacted and concentrated area than they can confine their children to segregated schools."

Id. at 390 (citations & footnote omitted). The unifying theme of these and other cases is that this nation is dedicated to balanced and dispersed integrated, public housing.[23]

In trying to eradicate other manifestations of racial discrimination, courts, including the Supreme Court of the United States, have recognized that statistics alone can establish racial discrimination. *Turner v. Fouche*, 396 U. S. 346, 90 S. Ct. 532 (1970), confronted the Supreme Court with the issue whether blacks had been excluded from grand

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23. The sole case cited affirmatively by the Authority, *Blackshear Residents Org. v. Housing Authority*, 347 F. Supp. 1138 (W. D. Tex. 1971), is directly contrary to its position. There, plaintiffs sought an order compelling the housing authority to adopt an affirmative action plan to desegregate racially-imbalanced housing projects. The court's response is well-considered and apt.

> "In justification of the relief sought, plaintiffs analogize the present posture of the Housing Authority to that of a local school board faced with the vestiges of a formerly segregated school system. Upon the authority of Green v. County School Board, 391 U. S. 430, 88 S. Ct. 1689, 20 L. Ed. 2d 716 (1968), they contend that the Housing Authority is 'clearly charged with the affirmative duty to take whatever steps might be necessary to convert to a unitary system in which racial discrimination would be eliminated root and branch,' 391 U. S. at 437-438, 88 S. Ct. at 1694, and cite subsequent Fifth Circuit school desegregation cases in support of their proposal for a desegregation plan to be implemented under the continuing supervision of the Court.
>
> The comparison appears in many respects to be quite accurate."

Id. at 1145. The relief requested was denied, however, for two reasons. First, the court found that the housing authority faithfully adhered to HUD tenant selection procedures. Second, the authority had officially declared that it would disperse future housing projects outside of areas exclusively populated by minority groups. Neither factor appears instantly. The Commonwealth Court concluded (and the Authority is bound by this conclusion because it took no appeal, see note 12 supra) that the Authority had not in fact complied with HUD regulations. And the record contains no official commitment by the Authority to disperse housing projects.

juries because of their race. After reviewing the evidence, Mr. Justice Stewart speaking for a unanimous Court, concluded:

> "In sum, the appellants demonstrated a substantial disparity between the percentages of Negro residents in the county as a whole and of Negroes on the newly constituted jury list. They further demonstrated that the disparity originated, at least in part, at the one point in the selection process where the jury commissioners invoked their subjective judgment rather than objective criteria. The appellants thereby made out a prima facie case of jury discrimination, and the burden fell on the appellees to overcome it."

Id. at 360, 90 S. Ct. at 540 (footnote omitted). Since no acceptable explanation was offered to rebut the prima facie case, the Supreme Court concluded that the grand jury selection process under scrutiny was unconstitutional.[24]

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24. See also *Griggs v. Duke Power Co.*, 401 U. S. 424, 91 S. Ct. 849 (1971). There, the United States Supreme Court under the authority of the Civil Rights Act of 1964, 42 U. S. C. A. § 2000e-2 (1974), invalidated the requirements of standardized general intelligence tests or high school education for employment, where the requirements bore no relation to the jobs sought, the jobs were formerly held only by whites, and the effect of the tests was to disadvantage minority groups. "[G]ood intent or absence of discriminatory intent does not redeem employment procedures or testing mechanisms that operate as 'built-in headwings' for minority groups and are unrelated to measuring job capability." Id. at 432, 91 S. Ct. at 854. See also *Hawkins v. Town of Shaw*, 461 F. 2d 1171 (5th Cir. 1972) (en banc) (per curiam). For an exhaustive treatment on the relationship between discriminatory motive and proof of discrimination, see *United States v. Texas Educ. Agency*, 467 F. 2d 848, 864-65 n. 25 (5th Cir. 1972) (en banc).

In *United States v. Medical Society*, 298 F. Supp. 145 (D. S. C. 1969), the United States Attorney General sought to restrain a hospital from operating on a racially discriminatory basis. There was no finding that a black had ever been refused admission to the hospital. The court nonetheless held that where the hospital's "course of conduct has predictably resulted in practically no Negroes being patients at" the hospital, Id. at 152, a Civil Rights Act violation had been made out. See 42 U. W. C. A. § 2000a-5(a) (1974).

In *Hawkins v. Town of Shaw*, 437 F. 2d 1286 (5th Cir. 1971), aff'd en banc, 461 F. 2d 1171 (5th Cir. 1972) (per curiam), the United States Court of Appeals for the Fifth Circuit found a prima facie case of racial discrimination violative of the equal protection clause from statistics alone: almost 100% of the houses in Shaw not served by municipal services were occupied by blacks. Having found a prima facie case, the court considered whether a compelling governmental interest justified the disparities, and concluded none did. 437 F. 2d at 1288-92.

Parham v. Southwestern Bell Telephone Co., 433 F. 2d 421 (8th Cir. 1970), involved employment discrimination. The court had before it statistics that the Arkansas employer had never had more than 2% blacks in its work force, and that the black population of Arkansas, according to the 1960 census, was over 21%. The Court of Appeals for the Eighth Circuit held that "these statistics, which revealed an extraordinarily small number of black employees, except for the most part as menial laborers, established a violation of Title VII of the Civil Rights Act of 1964." Id. at 426 (footnote omitted). See 42 U. S. C. A. § 2000e-2(a) (1974).

NLRB v. Mansion House Center Management Corp., 473 F. 2d 471 (9th Cir. 1973), held that "the remedial machinery of the National Labor Relations Act cannot be available to a union which is unwilling to correct past practices of racial discrimination." Id. at 477. At issue also was whether the hearing examiner and Board had properly excluded statistics from being used to demonstrate union racial discrimination. In holding the agency decision to be error, the court stated that

> "statistical evidence may well corroborate and establish that a union has been guilty of racial practices in the past. In face of such proof, passive attitudes of good faith are not sufficient to erase the continuing

> stigma which may pervade a union's segregated membership policies. The fact that no minority applicant has been rejected by the union is not the sole test."

Id.

The United States Court of Appeals for the Tenth Circuit has likewise concluded that even in the absence of proof of a single act of discrimination, an unlawful employment practice in violation of 42 U. S. C. A. § 2000e-2(a) (1974) can be made out from statistics alone. *Jones v. Lee Way Motor Freight, Inc.*, 431 F. 2d 245, 247 (10th Cir. 1970), cert. denied, 401 U. S. 954, 91 S. Ct. 972 (1971).[25]

These cases demonstrate the salutory principle: "In the problem of racial discrimination, statistics often tell much, and Courts listen." *Alabama v. United States*, 304 F. 2d 583, 586 (5th Cir.) (footnote omitted), aff'd, 371 U. S. 37, 83 S. Ct. 145 (1962). See also *Brooks v. Beto*, 366 F. 2d 1, 9 (5th Cir. 1966).[26] That principle underlay our decision

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25. Accord, *United States v. Local 46, Wood Lathers*, 471 F. 2d 408, 414 n. 11 (2d Cir.), cert. denied, 412 U. S. 939, — S. Ct. — (1973); *United States v. Chesapeake & O. Ry.*, 471 F. 2d 582, 583 (4th Cir. 1972), cert. denied, 411 U. S. 939, 93 S. Ct. 1893 (1973); *Rowe v. General Motors Corp.*, 457 F. 2d 348, 355 (5th Cir. 1972); *Local 189, Papermakers v. United States*, 416 F. 2d 980 (5th Cir. 1969), cert. denied, 397 U. S. 919, 90 S. Ct. 926 (1970); *United States v. N. L. Indus., Inc.*, 479 F. 2d 354 (8th Cir. 1973); *United States v. St. Louis-San Francisco Ry.*, 464 F. 2d 301 (8th Cir. 1972); *United States v. Local 86, Ironworkers*, 443 F. 2d 544, 551 (9th Cir.), cert. denied, 404 U. S. 984, 92 S. Ct. 447 (1971); *United States v. Local 73, Plumbers*, 314 F. Supp. 160 (S. D. Ind. 1969); *Lea v. Cone Mills Corp.*, 301 F. Supp. 97, 102 (M. D. N. C. 1969), modified, 438 F. 2d 86 (4th Cir. 1971); *Dobbins v. Local 212, Electrical Workers*, 292 F. Supp. 413 (S. D. Ohio 1968).

26. Accord, *Turner v. Fouche*, 396 U. S. 346, 360, 90 S. Ct. 532, 540 (1970) (grand jury and school board selection); *United States v. Board of Educ.*, 396 F. 2d 44, 46 (5th Cir. 1968); *Armstead v. Starkville Municipal Separate School Dist.*, 325 F. Supp. 560, 569 (N. D. Miss. 1971), modified, 461 F. 2d 276 (5th Cir. 1972). See also *Local 67, Iron Workers v. Hart*, 191 N. W. 2d 758, 769-70 (Iowa 1971).

in *Chester School District,* and it underlies our decision today.

The Authority seeks to avoid the impact of the Human Relations Act by arguing that blacks do not want to live with whites and whites not with blacks.[27] Preliminarily, the record belies this argument. The director of the William Penn project testified that she was also responsible for the administration of another project, one for the elderly. According to her testimony, at the time of the public housing this project was amicably integrated, with approximately an equal number of blacks and whites as tenants.

A more forceful rebuttal, however, is found in the elegant language of Justice Frankfurter.

> "Local customs, however hardened by time, are not decreed in heaven. Habits and feelings they engender may be counteracted and moderated. Experience attests that such local habits and feelings will yield, gradually though this be, to law and education. And educational influences are exerted not only by explicit teachings. They vigorously flow from the fruitful exercise of the responsibility of those charged with political official power and from the almost unconsciously transforming actualities of living under law."

Cooper v. Aaron, 358 U. S. 1, 25, 78 S. Ct. 1401, 1413 (1958) (concurring opinion).[28] Or, as this Court stated in *Chester*

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27. Another variation of this argument advanced by the Authority is that its compliance with the Commission order will result in substantial vacancies for considerable durations in the four projects. At this point, suffice it to say that the record is utterly barren of any indication that this will be the case.

28. In *United States v. Jefferson County Bd. of Educ.,* 417 F. 2d 834 (5th Cir. 1969), a school desegregation case, the Court of Appeals for the Fifth Circuit stated:

> "There was testimony that white students would not attend formerly Negro schools. This is not a legal argument."

School District, "The best way to demonstrate the 'inherent worth of [one's] neighbor' is to place individuals in a situation where they are exposed to their neighbor." 427 Pa. at 171, 233 A. 2d at 297. In the final analysis, to give effect to this argument of the Authority would be to begin to undo the progress, often difficult and laborious in achievement, we as a nation have taken toward a discrimination-free society. See, e.g., *Uniontown Area School District v. Pennsylvania Human Relations Commission*, 455 Pa. 52, 313 A. 2d 156 (1973); *Balsbaugh v. Rowland*, 447 Pa. 423, 290 A. 2d 85 (1972); *Pennsylvania Human Relations Commission v. Chester School District*, 427 Pa. 157, 233 A. 2d 290 (1967).

The Authority next contends that it has no responsibility to end de facto segregation because its compliance with federal law and the regulations of the United States Department of Housing and Urban Development preempts the sanctions of the Human Relations Act. This issue was raised in the Commonwealth Court and decided adversely to the Authority. Since the Authority took no appeal, it is bound by the decision of the court on this issue. See note 12 *supra*.

That court most emphatically rejected the factual predicate to the Authority's argument.

> "Reading the record with care, we find that [the Authority's] blank pronouncement of adherence to HUD's Plan B [29] is not substantiated by sworn testi-

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28. (Cont'd.)
Id. at 837 n. 2. See also *Steel v. Savannah-Chatham County Bd. of Educ.*, 333 F. 2d 55, 61 (5th Cir.), cert. denied, 379 U. S. 933, 85 S. Ct. 332 (1964).

29. The Director of Assisted Programs at HUD's Philadelphia Regional Office (covering Chester) testified at the public hearing and described the circumstances relating to the Authority's tenant selection procedure in the following fashion. In 1968 HUD required the Authority to adopt a nondiscriminatory tenant selection procedure; the choice was between a Plan A and a Plan B. Plan A con-

mony. HUD officers testified that they never thoroughly investigated the files of [the Authority] to determine whether the plan was implemented.

"In truth, the testimony demonstrates that any HUD investigation would be futile. [The Authority] in only a few instances noted an applicant's rejection of available housing prior to ultimate acceptance of a location. This violates the HUD formulated plan which requires [the Authority] to interpose at the bottom of the list of prospective tenants an applicant who refuses housing. Where no rejections were indicated, how can one determine whether the HUD plan had been followed?"

9 Pa. Commonwealth Ct. at 423, 305 A. 2d at 755.

We also cannot agree with the conclusion of the Commonwealth that the Commission did not support with substantial evidence its finding that racial imbalance in the four projects increased segregation in Chester's public schools, *Chester School District*, 427 Pa. at 170-71, 233 A. 2d at 297, specifically recognized the correlation between housing patterns and segregated schooling. It would be illogical indeed to maintain that neighborhood schools do not reflect the racial composition of the neighborhoods from which they draw their pupils.[30] "One of the consequences

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29. (Cont'd.)
templated that a prospective tenant would be given a single offer of housing and if he declined, would go to the bottom of the list. Plan B allowed a housing authority to extend up to three offers of housing before a refusal would require the prospective tenant to be given lowest priority. Offers, pursuant to Plan B, were made on the basis of location, and not projects. In other words if two (or more) projects were physically proximate, an offer at either would be considered a single offer for both. The Authority chose Plan B; Lamokin and Ruth Bennett are defined as a single location.

30. The Legislature as part of its findings for the Human Relations Act explicitly acknowledged the connection between racial discrimination in housing and segregated schools.

of . . . racial concentration is that it has become virtually impossible to achieve meaningful school desegregation. Indeed, as even a glimmering of objectivity will disclose, a dispersal of urban housing patterns is the only alternative to massive bussing if desegregation, rather than resegregation, is to be achieved." *Crow v. Brown*, 332 F. Supp. 382, 391 (N. D. Ga. 1971), aff'd, 457 F. 2d 788 (5th Cir. 1972). Moreover, two officials of the Chester School District testified at the public hearing that greater racial balance in the four projects would substantially aid the district's task in integrating Chester's public schools.

Our final task is to decide whether the Commission's order is a patent attempt to achieve ends other than those which can fairly be said to effectuate the policies of the Human Relations Act. *Pennsylvania Human Relations Commission v. Alto-Reste Park Cemetery Association*, 453 Pa. 124, 134, 306 A. 2d 881, 887 (1973) (adopting standard enunciated in *Fibreboard Paper Products Corp. v. NLRB*, 379 U. S. 203, 216, 85 S. Ct. 398, 406-07 (1964)).

Paragraphs two, three, and four [31] can be treated as a unit since they all relate to the Commission's directing the Authority to take affirmative steps to end the de facto segregation in its four projects. We have determined that de facto segregation in Chester's public housing is prohibited by the Human Relations Act. An unlawful discriminatory practice having been found to exist, the Commission is statutorily empowered "to take such affirmative action . . . as, in the judgment of the Commission, will effectuate the purposes of this act . . . ." 43 P. S. § 959 (Supp. 1974).

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30. (Cont'd.)

"The denial of equal . . . housing . . . opportunities because of [racial] discrimination . . . compels many individuals to live in dwellings which are substandard, unhealthful and overcrowded, resulting in racial segregation in public schools . . . ." 43 P. S. § 952(a) (Supp. 1974).

31. For the text of paragraphs two, three, four, eight, and ten, see Appendix C.

We cannot say on this record that this remedy embodied in paragraphs two, three, and four—designed to achieve in each of the four housing projects the same racial composition that exists throughout all the Authority's projects [32]—is a patent attempt to achieve ends other than those which can fairly be said to effectuate the policies of the Act.

As for the reporting requirement (paragraph eight), this Court in *Alto-Reste, supra at* 136-37, 306 A. 2d at 888-89, directly approved such a remedy. We note again that the Legislature specifically authorized the Commission in its discretion to require a "report of the manner of compliance." 43 P. S. § 959 (Supp. 1974). And the Commission did not abuse its discretion in determining that two years is a reasonable time period. See *Alto-Reste, supra* at 136-38 nn. 7 & 8, 306 A. 2d at 888-89 nn. 7 & 8.

Finally, paragraph ten directs the Authority to meet with the Chester School District to draft a plan to ensure that tenants with school-age children would receive priority in being assigned housing in the to-be-integrated projects.[33] This paragraph was designed to cure the violation of 43 P. S. § 955(e) (1964), prohibiting the aiding and abetting of unlawful discriminatory practices. Not only does this portion of the order seek to remedy that violation, but it will undoubtedly also aid the officials of Chester's public schools in fulfilling their obligations under *Chester School District.* Again, the record does not allow us to conclude

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32. Because the Commission's order seeks to make the racial composition in each housing project correspond to the ratio of whites to blacks for all projects administered by the Authority, it does not appear that either blacks or whites as groups will be favored or disadvantaged in their quest for public housing, to any greater extent than they are presently.

33. We note there is nothing in the record or in the Commission's order that indicates tenants who currently reside in the four projects would be assigned to another project on anything but a voluntary basis.

that by this order a patent attempt is being made to circumvent the fairly-stated policies of the Act.[34]

Accordingly, paragraphs two, three, four, eight, and ten of the Commission's final order of April 24, 1972, are reinstated. So modified, the order of the Commonwealth Court is affirmed.

Mr. Chief Justice Jones and Mr. Justice Eagen concur in the result.

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34. We reiterate our specific holding in *Balsbaugh v. Rowland*, 447 Pa. 423, 290 A. 2d 85 (1972), that racial consciousness is appropriate in fashioning a remedy once unlawful discrimination has been found to exist.

> "'Just as the race of students must be considered in determining whether a constitutional violation has occurred, so also must race be considered in formulating a remedy.'"

Id. at 437-38, 290 A. 2d at 93 (quoting *North Carolina Bd. of Educ. v. Swann*, 402 U. S. 43, 46, 91 S. Ct. 1284, 1286 (1971)). See *Swann v. Charlotte-Mecklenburg Bd. of Educ.*, 402 U. S. 1, 15, 91 S. Ct. 1267, 1276 (1971); *United States v. Montgomery County Bd. of Educ.*, 395 U. S. 225, 234, 89 S. Ct. 1670, 1674-75 (1969); *Coppedge v. Franklin County Bd. of Educ.*, 394 F. 2d 410, 412 & n. 2 (5th Cir. 1968). In *Louisiana v. United States*, 380 U. S. 145, 85 S. Ct. 817 (1965), the Supreme Court stated:

> "We bear in mind that the court has not merely the power but the duty to render a decree which will so far as possible eliminate the discriminatory effects of the past as well as bar like discrimination in the future."

Id. at 154, 85 S. Ct. at 822. Cf. *DeFunis v. Odegaard*, 82 Wash. 2d 11, 507 P. 2d 1169 (1973), vacated as moot and remanded, — U. S. —, 94 S. Ct. 1704 (1974); *San Francisco Unified School Dist. v. Johnson*, 3 Cal. 3d 937, 948-51, 479 P. 2d 669, 675-77, 92 Cal. Rptr. 309, 315-17, cert. denied, 401 U. S. 1012, 91 S. Ct. 1266 (1971).

ORDER OF THE SUPREME COURT OF PENNSYLVANIA DENYING PETITION FOR LEAVE TO FILE PETITION FOR REARGUMENT.

December 17, 1974

Petition denied.

Per Curiam

OPINION OF THE COMMONWEALTH COURT OF PENNSYLVANIA.

IN THE
COMMONWEALTH COURT OF PENNSYLVANIA

No. 506 C. D. 1972

Chester Housing Authority,

Appellant

v.

Pennsylvania Human Relations Commission,
Commonwealth of Pennsylvania,

Appellee

Before:
Honorable James S. Bowman, President Judge.
Honorable James C. Crumlish, Jr., Judge.
Honorable Harry A. Kramer, Judge.
Honorable Roy Wilkinson, Jr., Judge.
Honorable Glenn E. Mencer, Judge.
Honorable Theodore O. Rogers, Judge.
Honorable Genevieve Blatt, Judge.

Argued: January 8, 1973

Opinion by Judge Crumlish, Jr., filed: June 11, 1973:

The Pennsylvania Human Relations Commission directed the Chester Housing Authority to reform its present tenant selection and assignment procedures and to take affirmative action to alleviate the racial imbalance at its housing facilities.

In a letter dated July 13, 1971, the Chairman of the Pennsylvania Human Relations Commission [Commission]

notified the Chairman of the Chester Housing Authority [CHA] that a public hearing would be conducted on August 5, 1971, to receive testimony relative to a Commission-initiated Complaint.[1] The Complaint alleged that CHA had in the past "maintained and continues until the present time to maintain housing projects under its supervision and control which are segregated by the race of the tenants therein" and that its failure to take corrective measures constituted an unlawful discrimination practice in violation of Section 5(h)(1) of the Pennsylvania Human Relations Act. The Complaint further alleged that such discriminatory practice by CHA "effectively aids and abets the continuing segregation of students within the public schools in the City of Chester" in violation of Section 5(e) of the Act.

After the filing of the complaint, the Commission conducted an investigation and as a part thereof examined the files and policies of CHA and as a result determined that probable cause existed for crediting the allegations of the complaint.

A public hearing was conducted on August 5, 1971 after which the Commission unanimously determined that CHA had engaged in discriminatory practices in violation of Sections 5(h)(1) and 5(e) of the Pennsylvania Human Relations Act.

CHA appeals to us.

At the outset, we feel compelled to note that the record in this case is very disorganized and at times approaches incoherence which makes effective appellate review in this inherently complex and vital area at best difficult. Unless this Court is supplied with a comprehensive, coherent record, significant and damaging delays in the administra-

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1. Section 3(f) of the Pennsylvania Human Relations Act, Act of October 27, 1955, P. L. 1955, as amended, 43 P. S. § 951, authorizes the Commission to initiate a complaint.

tion of justice will result. Having spoken, we now focus our attention on the merits of the case.

CHA was created under the Housing Authorities Law[2] and is authorized to construct, own, maintain and operate federally assisted low rent housing in the City of Chester, including those projects known as Lamokin Village, Ruth L. Bennet Terrace Homes, William Penn Homes and McCaffery Village pursuant to 42 U. S. C. § 1401 et seq.

In the summer of 1969, the racial composition of these projects was as follows:

Lamokin Village	346 Blacks	0 Whites
McCaffery Village	0 Blacks	347 Whites
Ruth L. Bennet Homes	385 Blacks	0 Whites
William Penn Village	257 Blacks	20 Whites

The thrust of the Commission's allegations and the final decision is that the tenant selection and placement process employed by CHA resulted in black applicants having the opportunity to rent apartments only in those facilities predominantly housing black families.[3] The selection process, the Commission held, was discriminatory and in contravention of the Pennsylvania Human Relations Act.

CHA contends that the Commission erred in its determination that CHA discriminated in providing housing on the basis of racial considerations because:

1. The acts charged to CHA by the Commission (assuming competent proof) do not violate any provision of the Pennsylvania Human Relations Act;

2. The Pennsylvania Human Relations Act does not pre-empt provisions of federal and state statutes relating to low-cost housing;

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2. Act of May 28, 1937, P. L. 955, Section 1, as amended, 35 P. S. § 1541 et seq.

3. The Commission also stresses the converse that is that whites were denied the opportunity to rent available apartment space in the black projects.

3. The Commission's findings of fact and conclusions of law were not supported by substantial evidence; and

4. The Commission's order is unenforceable.

We strike down the appellant's first three contentions. With the fourth, in part, we agree.

The Order of the Commission:

"Final Order

And Now, this 24th day of April, 1972, upon consideration of the foregoing Findings of Fact, Conclusions of Law, Commission's Decision and pursuant to Section 9 of the Pennsylvania Human Relations Act, it is hereby

Ordered

That Respondent Chester Housing Authority, its agents, servants, employees and each of their respective successors:

1. Shall cease and desist from employing its present tenant selection and assignment procedures.

2. Shall cease and desist from renting housing accommodations in McCaffery Village to white tenant families until the racial composition of said project reflects the ratio of negro to white tenant families in all public housing projects under Respondent's supervision, direction and control.

3. Shall cease and desist from renting housing accommodations in Lamokin Village, William Penn Village and Ruth L. Bennet Homes to negro tenant families until the racial composition of each of said projects reflects the ratio of white to negro tenant

families in all public housing projects under Respondent's supervision, direction and control.

4. Shall develop and submit to the Pennsylvania Human Relations Commission (at its Regional Office, Room 101, State Office Building, Broad and Spring Garden Streets, Philadelphia, Pennsylvania) for its approval, within 60 days of the effective date of this Order, an affirmative action program designed to achieve in Respondent's public housing projects the racial composition as set forth in Paragraphs 2 and 3 above, and upon obtaining said approval, forthwith to effectuate said program. Said plan shall include, but not be limited to preoccupancy and post-occupancy counseling and the establishment of tenant councils.

5. Shall, in writing, inform all applicants and all present tenants of this Final Order and the content thereof.

6. Shall, beginning with the effective date of this Order, submit written offers to rent accommodations in its public housing projects to all applicants and require all replies thereto to be in writing, maintaining a permanent record of such offers and replies in its files.

7. Shall, from the effective date of this Order, utilize the services of the intergroup specialist of the Equal Opportunity Staff of the U. S. Department of Housing and Urban Development and the consultative services of the Pennsylvania Human Relations Commission.

8. Shall report to the Pennsylvania Human Relations Commission at its Regional Office as above set forth, beginning one month from the effective date of this Order, and monthly thereafter until such time as

the racial composition in each project, as set forth in items 2 and 3 above, is achieved. Such report to contain information regarding the racial composition of each of its housing projects, as well as a list of all applicants, transfers, assignment and reassignments of all units in all said projects under its supervision, direction and control by racial identification and reflecting the ratio of negro and white tenant families as set forth in paragraphs 2 and 3 above, family size and size of unit requested and assigned, list of vacancies in each project and, thereafter, shall for a further period of two years, make such reports quarter-annually.

9. Shall, within 90 days of the effective date of this Order, establish objective written standards for the approval of applicants and assignment of units, copies of said standards to be submitted to the Pennsylvania Human Relations Commission (as set forth above) for its approval.

10. Shall meet with the Chester School District for discussion and drafting of a plan for a priority selection system for the placement of tenants with school-age children in Respondent's housing projects which placement will facilitate the desegregation of the schools of Chester School District and which shall be made to the Pennsylvania Human Relations Commission (as above set forth), within 180 days of the effective date of this Order, for its approval, whereupon same shall be forthwith effectuated."

Looking at the Commission's findings, we see its concern for tenant selection procedures which result in blacks being offered apartments only available in the black housing projects, and whites apartments only in the predominantly white project. This, in the Commission's eyes, is a

discrimination prohibited by the Pennsylvania Human Relations Act.

The appellant contends that the Human Relations Act simply prohibits a *refusal* to lease based on racial discrimination, and that in fact CHA has never refused to rent due to one's racial extraction. At the worst, assuming that the Commission can prove CHA does undertake such policies, it merely funnels blacks into black projects and whites into white projects according to CHA.

The pertinent section of the Human Relations Act at issue here is Section 5. Section 5 declares it to be an unlawful discriminatory practice:

> "(h) for any person to:
>
> (1) *Refuse* to sell, lease, finance or otherwise to deny or withhold commercial housing because of the race, color . . . of any prospective . . . occupant or user of such commercial housing. . . ." (Emphasis added.)

We are fortified in our conclusion that appellant has construed the language of § 5(h)(1) too strictly by a careful reading of § 5(h)(1) and by other relevant sections of the Act.

Appellant suggests that unless there is a complete refusal to rent to a black there can be no violation of the Act. Let us examine appellant's rationalization. When a black person is told by CHA that there is no apartment space available when in fact there is space available at the white project, at that precise moment there is a *refusal* to rent because of the race of the prospective occupant, which specifically defies Section 5 of the Human Relations Act. To say as appellant does, that a later offer of space to the same black person within the black housing project when and if it becomes available erases the racial discrimination

initially practiced is to clothe this Court with naivete which we are unwilling to accept. Moreover, acceptance of appellant's tight interpretation of the term "refuse to lease" would also cause us to decimate the legislature's obvious pronouncement that the provisions of the Pennsylvania Human Relations Act ". . . shall be construed liberally for the accomplishment of the purposes thereof. . . ." 43 P. S. § 962(a).

Also and very simply, we feel that denying blacks the opportunity to rent apartments in the white housing projects fits squarely within § 5(h)(1) which prohibits "withhold[ing] commercial housing because of the race" of any prospective owner (tenant or occupant).

Appellant's second contention is that the Pennsylvania Act does not preempt provisions of federal and state statutes relating to low-cost housing. This appears to relate to CHA's primary defense at the Commission hearing, that CHA followed a tenant selection plan structured by the United States Department of Housing and Urban Development [HUD] which was designed to effectuate Title VI of the Civil Rights Act of 1964.[4]

Reading the record with care, we find that CHA's blank pronouncement of adherence to HUD's Plan B is not substantiated by sworn testimony. HUD officers testified that they never thoroughly investigated the files of CHA to determine whether the plan was implemented.

In truth, the testimony demonstrates that any HUD investigation would be futile. CHA in only a few instances

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4. Appellant's argument in this area simply stresses the appellant's position that no state Human Relations Commission should be permitted to interfere with a federally-assisted housing development if the administration of that development conforms with the applicable federal law.

We dissect such a general statement into the one issue that appears relevant considering the context of this particular factual situation.

noted an applicant's rejection of available housing prior to ultimate acceptance of a location. This violates the HUD formulated plan which requires CHA to interpose at the bottom of the list of prospective tenants an applicant who refuses housing. Where no rejections were indicated, how can one determine whether the HUD plan had been followed?

Putting to rest the preemption argument, we say that the mere fact that CHA is federally assisted does not exempt it from the provisions of the State Human Relations Act which bars housing discrimination. An authority created by the State Legislature [5] and clothed with public trust must bear the closest scrutiny.[6]

Next, we look to the appellant's third contention, that the Commission's finding of fact and conclusions of law are not supported by substantial evidence.

The Administrative Agency Law, Act of June 4, 1945, P. L. 1388, as amended, 71 P. S. § 1710 and the Pennsylvania Human Relations Act tell in reviewing an adjudication of the Pennsylvania Human Relations Commission that we must limit ourselves to a determination of whether the agency acted in accordance with the law and whether findings of fact to support the conclusion are based on sufficient evidence. Wilkinsburg School District et al. v. Human Relations Commission et al., 6 Pa. Commonwealth Ct. 378, 295 A. 2d 609 (1972).

We have painstakingly reviewed the testimony produced at the hearing stage. Generally, the evidence on which the Commission relies in support of its allegations of discrimination is spotty and indeed lacks fundamental

5. Housing Authorities Law, Act of May 28, 1937, P. L. 955, as amended, 35 P. S. § 1541 et seq.

6. The Commonwealth and all political subdivisions and authorities are specifically subjected to the requirements of the Pennsylvania Human Relations Act. 43 P. S. § 954(a).

background material. No thorough study of the duration and overall effect of the implementation of the tenant selection and placement procedures was ever made. What was established through sufficient evidence, however, was that certain tenants had been routed through CHA's tenant placement procedure into projects whose tenant majority (usually entirety) corresponded to the tenants' race.

The appellant concedes that blacks are always offered positions in black projects, and that whites never are. It points to a complicated system of priorities allegedly based on the HUD plan and the prevalent number of vacancies in the black project as the real cause of the continued scheme of segregation.

However, to us the most telling evidence came from the occupancy supervisor for CHA who could give no reason why a black woman with a priority need was caused to wait for an opening in a black project when, during that wait, the white project had a suitable vacancy.

We conclude that sufficient competent evidence was adduced to sustain the Commission's findings that *particular tenants*, both black and white, were refused housing due to racial considerations because CHA had failed to offer available space, regardless of location, to a top priority tenant when it should have done so, regardless of race consideration.

The Commission's ninth and tenth findings of fact must fall because there is insufficient evidence to substantiate these broad brush conclusions.[7] The record fails to

7. These findings provide:

"9. As a result of the aforesaid practices the racial compositions of Respondent's aforesaid public housing projects were and are segregated by the race of the tenants thereof.

10. The maintaining of the aforesaid practices by Respondent has increased the racial segregation of the public schools of the City of Chester. Of 3,000 students in the four Chester Public Housing units, approximately 2700 to 2800 attend Chester Public

reveal the duration of discriminatory practices or the probable effect on the racial composition of the housing projects as they now exist. Factors other than discriminatory selection and placement procedures may very well have been the reason for the present segregated housing composition of the Chester housing projects. Particular instances of tenant discrimination in 1970 and 1971 are just not enough to sustain the Commission's findings that the discriminatory selection procedures are the cause of the present racial composition in the Chester Schools and housing projects.

Finally, we turn to the order of the Commission and appellant's final contention that the order is unenforceable.

The appellant urges upon this Court the argument that implementation of certain parts of the Commission's order would necessarily cause unbounded vacancies in the housing projects. This is not what makes the Order unenforceable. The Order requires CHA to cease renting accommodations to white tenants until the racial composition in the white project reflects the total white to black ratio in all the projects under its control. The same requirement is extended to the black projects. In addition to or in furtherance of its objective, the Order sets up the means by which this desegregation is to be implemented.

The ninth and tenth findings of fact were stricken because of the lack of evidence to support these findings.

Likewise, the portion of the Commission's Order implementing a far-reaching desegregation plan in the Chester housing projects must be stricken for lack of evidence. Once again, it must be emphasized that a record

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7. (Cont'd.)
Schools. If the aforesaid four Public Housing units were racially balanced, the Chester School District Plan for racially balancing its Public Schools would have been redesigned so as to reduce the need and cost of busing Chester School District students."

barely substantiating particular acts of discrimination in tenant placement in the years 1970 and 1971 cannot be the springboard for a Commission order which attempts to rectify segregated housing projects when there is no evidence to support the conclusion that these discriminatory placement practices were the cause of the segregation.

These portions of the Commission's Order are not "unenforceable" as appellant contends, but rather are "unwarranted" because of the absence of evidence to support the Order.[8]

8. § 44 of the Administrative Agency Law gives the Court the power to set aside or modify the Commission's adjudication where the findings of fact necessary to support its adjudication are not supported by substantial evidence. Pennsylvania Human Relations Commission v. Chester School District, 427 Pa. 157, 233 A. 2d 290 (1967).

ORDER OF THE COMMONWEALTH COURT OF PENNSYLVANIA.

ORDER.

And Now, this 11th day of June, 1973, the Order of the Pennsylvania Human Relations Commission is hereby affirmed with the exception of enumerated paragraphs two, three, four, eight and ten which are stricken.

James C. Crumlish, Jr.,
Judge

FINDINGS OF FACT, CONCLUSIONS OF LAW, DECISION, AND FINAL ORDER OF THE PENNSYLVANIA HUMAN RELATIONS COMMISSION.

COMMONWEALTH OF PENNSYLVANIA.
PENNSYLVANIA HUMAN RELATIONS COMMISSION.

DOCKET NO. H-1395.

PENNSYLVANIA HUMAN RELATIONS COMMISSION,
Complainant

v.

CHESTER HOUSING AUTHORITY,
Respondent.

FINDINGS OF FACT, CONCLUSIONS OF LAW, COMMISSION'S DECISION AND FINAL ORDER.

FINDINGS OF FACT.

1. Complainant herein is the Pennsylvania Human Relations Commission, an administrative agency of the Commonwealth of Pennsylvania.

2. Respondent herein is the Chester Housing Authority, a public housing authority of the Commonwealth of Pennsylvania.

3. Respondent is in charge of and administers the following public housing projects in Chester, Delaware County, Pennsylvania, and the tenant selection and assignment procedures thereof:

Lamokin Village, containing 350 units
McCaffery Village, containing 350 units
Ruth L. Bennett Homes, containing 390 units
William Penn Village, containing 300 units

4. In the Summer of 1969 the racial composition of the aforesaid projects were as follows:

Lamokin Village	346 Negroes	0 whites
McCaffery Village	0 Negroes	347 whites
Ruth L. Bennett Homes	385 Negroes	0 whites
William Penn Village	257 Negroes	20 whites

5. At the time of the public hearing herein the racial composition of the aforesaid projects were maintained as above set forth.

6. Although the same type of housing accommodations was sought by both Negro and white applicants, Negro applicants whose applications were prior in time to applications of white applicants were not afforded an opportunity to rent available accommodations of the type sought in McCaffery Village but were, instead, offered accommodations in Lamokin Village, William Penn Village and Ruth L. Bennett Homes, to wit:

A. One Larrie Ellis, a Negro female, who applied on August, 1970 for a 3-bedroom unit and on February 1, 1971 was leased a unit in Ruth L. Bennett Homes (1119 Norris) which had been vacated on January 11, 1971. During the period from August 24, 1970 to February 11, 1971, a 3-bedroom unit in McCaffery Village (2800 W. 13th Street) which is totally white, was vacated on December 4, 1970 and was rented on December 18, 1970 to one Eleanor Hayes, a white female, even though she applied on November 3, 1970, a date later than when the aforesaid Larrie Ellis applied.

7. Although the same type of housing accommodations was sought by both Negro and white applicants, white applicants whose applications were prior in time to applications of Negro applicants were not afforded an opportunity to rent available accommodations in Lamokin Village, William Penn Village and Ruth L. Bennett Homes but were, instead, offered accommodations in McCaffery Village, to wit:

A. One Alice Ferris, a white female, applied on January 14, 1970 for a 4-bedroom unit and on November 17, 1970 was leased a unit in totally-white McCaffery Village (1010 McCaffery) which had been vacated on November 15, 1970. During the period from January 14, 1970 to November 17, 1970, 4-bedroom units were vacated in projects which were totally-Negro or substantially Negro. All were rented to Negro tenants, to wit:

1. To one Samuel Carr, a Negro male, who was leased a unit in Ruth L. Bennett Homes (1408 Alexander) on September 10, 1970 which had been vacated on June 30, 1970.

2. To one Annie Daniels, a Negro female, who was leased a unit in William Penn Village (404 Grounsell) on August 31, 1970 which had been vacated on July 2, 1970.

3. To one Valaida Washington, a Negro female, who was leased a unit in William Penn Village (409 Pancoast) on September 18, 1970 which had been vacated on July 23, 1970.

4. To one Lawton Porter, a Negro female, who was leased a unit in William Penn Village (404 Grounsell) on September 30, 1970 which had been vacated on September 21, 1970.

B. One Elizabeth Willis, a white female, applied on January 20, 1970 for a 3-bedroom unit and on November 12, 1970 was leased a unit in totally-white McCaffery Village (1200 McCaffery) which had been vacated on October 30, 1970.

One Hirst, a white male, applied for a 3-bedroom unit on March 10, 1970 and on November 17, 1970 was leased a unit in McCaffery Village (1110 Booth Street) which had been vacated on October 30, 1970.

During the period from January 20, 1970 to November 12, 1970 (in the case of the aforesaid Willis) and from March 10, 1970 to November 17, 1970 (in the case of the aforesaid Hirst) the following Negroes were placed in 3-bedroom units in a totally-Negro project, to wit:

1. One Delores Hodges, a Negro female, who applied on August 17, 1970, was leased a unit in Ruth L. Bennett Homes (922 Norris) on September 11, 1970 which had been vacated on June 2, 1970.

2. One Stinney, who is Negro and who applied on July 7, 1970, was leased a unit in Ruth L. Bennett Homes (1425 Norris) on October 10, 1970 which had been vacated on September 9, 1970.

3. One Elizabeth Gorman, a Negro female, who applied on July 15, 1970, was leased a unit in Ruth L. Bennett Homes (303 Ayars Place) on that same day and which unit had been vacated on May 15, 1970.

4. One Juanita Boyland, a Negro female, who applied on April 22, 1970, was leased a unit in William Penn Village (312 Gartside) on June 1, 1970 which had been vacated on March 16, 1970.

C. One Charles Huck, a white male, applied on February 8, 1971 for a 2-bedroom unit and on June 8, 1971 was

leased a unit in totally-white McCaffery Village (1002 Hardwick) which had been vacated on May 21, 1971. In the period from February 8, 1971 to June 8, 1971 a 2-bedroom unit in totally-Negro Ruth L. Bennett Homes (1118 W. Norris) had been vacated on May 11, 1971 and was leased on June 9, 1971 to one Brenda Bradley, a Negro female, who applied on April 12, 1971, more than two months after the date of the aforesaid Huck's application.

D. One Charles Rothwell, a white male, applied for a 2-bedroom unit on January 12, 1971 and on April 30, 1971 was leased a unit in totally-white McCaffery Village (1207 Ganster) when on March 18, 1971 such a unit had become vacant in totally-Negro Ruth L. Bennett Homes (926 Stovall) and which, on April 5, 1971, was leased to Victoria Oliver, a Negro female, who had applied on March 17, 1971, over two months after the date of Rothwell's application.

8. Although burned-out families were to be accorded priority, Respondent, disregarding such priority, placed white applicants in a totally-white project and Negro applicants in a totally-Negro or substantially Negro project, to wit:

A. One Adele Lewis, a Negro female, applied on February 16, 1971 for a 2-bedroom unit and was granted a burned-out priority. She was leased a unit in totally-Negro Ruth L. Bennett Homes (1316 W. Norris) on February 22, 1971 when, on February 18, 1971, such a unit in totally-white McCaffery Village (1200 Pulaski), vacant since January 30, 1971, was leased to one Sigola, a white female, who had applied on February 11, 1971, notwithstanding that the aforesaid Sigola did not have the aforesaid Lewis's priority.

B. One Althea Nickens, a Negro female, applied on June 30, 1970 for a 2-bedroom unit and was granted a burned-out priority. She was leased a unit in substantially-

Negro William Penn Village (404 Ayars) on July 1, 1970 when, on July 7, 1970, such a unit in totally-white McCaffery Village (1306 Pulaski), vacant since June 19, 1970, was leased to one Barbara Hickey, a white female, who had no priority.

9. As a result of the aforesaid practices the racial compositions of Respondent's aforesaid public housing projects were and are segregated by the race of the tenants thereof.

10. The maintaining of the aforesaid practices by Respondent has increased the racial segregation of the public schools of the City of Chester. Of 3,000 students in the four Chester Public Housing units, approximately 2,700 to 2,800 attend Chester Public Schools. If the aforesaid four Public Housing units were racially-balanced, the Chester School District plan for racially-balancing its Public Schools would have been redesigned so as to reduce the need and cost of busing Chester School District students.

CONCLUSIONS OF LAW.

1. At all times herein mentioned Respondent, an Authority of the Commonwealth of Pennsylvania, maintained and continues to maintain the public housing projects, as aforesaid, in Chester, Delaware County, Pa., under its supervision, direction and control.

2. At all times herein mentioned Complainant had and still has jurisdiction over the subject matter of these proceedings and over Respondent.

3. Because of its tenant selection and assignment procedures Respondent has maintained and continues to maintain public housing projects under its supervision, direction and control that are segregated by the race of the tenants thereof, an unlawful discriminatory practice in violation of

Section 5(h)(1) of the Act of October 27, 1955 P. L. 744, as amended, known as the Pennsylvania Human Relations Act.

4. Such aforesaid unlawful discriminatory practice by Respondent aids and abets racial segregation in the public schools of the City of Chester and is an unlawful discriminatory practice in violation of Section 5(e) of the aforesaid Act.

5. The Complaint, as amended in the public hearing herein, was properly made and executed in accordance with Section 9 of the Pennsylvania Human Relations Act.

It Is, therefore, recommended that the Commission enter an Order against Respondent requiring it to cease and desist from employing its present tenant selection and assignment procedures and to take affirmative action to eliminate its unlawful discriminatory practices.

Joseph X. Yaffe, Esq.,
Joseph X. Yaffe,
Presiding Commissioner.
Robert Johnson Smith,
Dr. Robert Johnson Smith,
Hearing Commissioner.
Andrew G. Freeman,
Andrew G. Freeman,
Hearing Commissioner.

COMMISSION'S DECISION.

AND Now, the 24th day of April, 1972, upon the recommendation of the Hearing Commissioners and upon all the evidence at the public hearing of this case and in consideration of the Findings of Fact and Conclusions of Law, the Pennsylvania Human Relations Commission, by unanimous decision, finds and determines that Respondent Chester Housing Authority has engaged in discriminatory practices in violation of Section 5(h)(1) and 5(e) of the Pennsylvania Human Relations Act of October 27, 1955 P. L. 744, as amended, in that by the use of its tenant selection and assignment procedures it has maintained the public housing projects under its supervision, direction and control as segregated by the race of the tenants thereof and, further, aid and abets the continuing segregation of the students of the public schools of the City of Chester, Delaware County, Pennsylvania.

COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA HUMAN RELATIONS
COMMISSION

Docket No. H-1395.

PENNSYLVANIA HUMAN RELATIONS
COMMISSION,

Complainant,

v.

CHESTER HOUSING AUTHORITY,

Respondent.

FINAL ORDER.

And Now, this 24th day of April, 1972, upon consideration of the foregoing Findings of Fact, Conclusions of Law, Commission's Decision and pursuant to Section 9 of the Pennsylvania Human Relations Act it is hereby

Ordered:

That Respondent Chester Housing Authority, its agents, servants, employees and each of their respective successors:

1. Shall cease and desist from employing its present tenant selection and assignment procedures.

2. Shall cease and desist from renting housing accommodations in McCaffery Village to white tenant families until the racial composition of said project reflects the ratio of Negro to white tenant families in all public housing projects under Respondent's supervision, direction and control.

3. Shall cease and desist from renting housing accommodations in Lamokin Village, William Penn Village and

Ruth L. Bennett Homes to Negro tenant families until the racial composition of each of said projects reflects the ratio of white to Negro tenant families in all public housing projects under Respondent's supervision, direction and control.

4. Shall develop and submit to the Pennsylvania Human Relations Commission (at its Regional Office, Room 101, State Office Building, Broad and Spring Garden Streets, Philadelphia, Pennsylvania) for its approval, within 60 days of the effective date of this Order, an affirmative action program designed to achieve in Respondent's public housing projects the racial composition as set forth in Paragraphs 2 and 3 above, and upon obtaining said approval, forthwith to effectuate said program. Said plan shall include, but not be limited to, preoccupancy and postoccupancy counseling and the establishment of tenant councils.

5. Shall, in writing, inform all applicants and all present tenants of this Final Order and the content thereof.

6. Shall, beginning with the effective date of this Order, submit written offers to rent accommodations in its public housing projects to all applicants and require all replies thereto to be in writing, maintaining a permanent record of such offers and replies in its files.

7. Shall, from the effective date of this Order, utilize the services of the intergroup specialist of the Equal Opportunity Staff of the U. S. Department of Housing and Urban Development and the consultative services of the Pennsylvania Human Relations Commission.

8. Shall report to the Pennsylvania Human Relations Commission, at its Regional Offices as above set forth, beginning one month from the effective date of this Order,

and monthly thereafter until such time as the racial composition in each project, as set forth in items 2 and 3 above, is achieved. Such report to contain information regarding the racial composition of each of its housing projects, as well as a list of all applicants, transfers, assignment and re-assignments of all units in all said projects under its supervision, direction and control by racial identification and reflecting the ratio of Negro and white tenant families as set forth in Paragraphs 2 and 3 above, family size and size of unit requested and assigned, list of vacancies in each project and, thereafter, shall for a further period of two years, make such reports quarter-annually.

9. Shall, within 90 days of the effective date of this Order, establish objective written standards for the approval of applicants and assignment of units, copies of said standards to be submitted to the Pennsylvania Human Relations Commission (as above set forth) for its approval.

10. Shall meet with the Chester School District for discussion and drafting of a plan for a priority selection system for the placement of tenants with school-age children in Respondent's housing projects which placement will facilitate the desegregation of the schools of Chester School District and which shall be made to the Pennsylvania Human Relations Commission (as approval set forth), within 180 days of the effective date of this Order, for its approval, whereupon same shall be forthwith effectuated.

PENNSYLVANIA HUMAN RELATIONS COMMISSION,
E. E. SMITH,
E. E. Smith, *Chairman*

ATTEST:
ROBERT JOHNSON SMITH,
Robert Johnson Smith,
Secretary.

APPENDIX B.

CONSTITUTIONAL PROVISIONS, STATUTES, AND REGULATIONS INVOLVED.

United States Constitution.

Article VI, Clause 2.

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

Amendment XIV, Section 1.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Civil Rights Act of 1866, Section 1, 42 U. S. C. § 1982.

All citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property.

Civil Rights Act of 1964, Title VI, Section 601, 42 U. S. C. § 2000d.

No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

Fair Housing Act of 1968, Title VIII.

Section 801, 42 U. S. C. § 3601.

It is the policy of the United States to provide, within constitutional limitations, for fair housing throughout the United States.

Section 804, 42 U. S. C. § 3604.

As made applicable by section 3603 of this title and except as exempted by sections 3603(b) and 3607 of this title, it shall be unlawful—

(a) To refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, color, religion, or national origin.

(b) To discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race, color, religion, or national origin.

(c) To make, print, or publish, or cause to be made, printed, or published any notice, statement, or advertisement, with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on race, color, religion, or national origin, or an in-

tention to make any such preference, limitation, or discrimination.

(d) To represent to any person because of race, color, religion, or national origin that any dwelling is not available for inspection, sale, or rental when such dwelling is in fact so available.

(e) For profit, to induce or attempt to induce any person to sell or rent any dwelling by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, color, religion, or national origin.

Section 815, 42 U. S. C. § 3615.

Nothing in this subchapter shall be construed to invalidate or limit any law of a State or political subdivision of a State, or of any other jurisdiction in which this subchapter shall be effective, that grants, guarantees, or protects the same rights as are granted by this subchapter; but any law of a State, a political subdivision, or other such jurisdiction that purports to require or permit any action that would be a discriminatory housing practice under this subchapter shall to that extent be invalid.

United States Housing Act of 1937, as amended through 1974.

Section 1, 42 U. S. C. § 1401.

It is declared to be the policy of the United States to promote the general welfare of the Nation by employing its funds and credit, as provided in this chapter, to assist the several States and their political subdivisions to alleviate present and recurring unemployment and to remedy the unsafe and insanitary housing conditions and the acute

shortage of decent, safe, and sanitary dwellings for families of law income, in urban, rural nonfarm, and Indian areas, that are injurious to the health, safety, and morals of the citizens of the Nation. In the development of low-rent housing it shall be the policy of the United States to make adequate provision for larger families and for families consisting of elderly persons. It is the policy of the United States to vest in the local public housing agencies the maximum amount of responsibility in the administration of the low-rent housing program, including responsibility for the establishment of rents and eligibility requirements (subject to the approval of the Authority), with due consideration to accomplishing the objectives of this chapter while effecting economies. It is the sense of the Congress that no person should be barred from serving on the board of directors or similar governing body of a local public housing agency because of his tenancy in a low-rent housing project.

Section 10(g)(2), 42 U. S. C. § 1410(g)(2).

(g) Every contract for annual contributions for any low-rent housing project shall provide that—

> (2) the public housing agency shall adopt and promulgate regulations establishing admission policies which shall give full consideration to its responsibility for the rehousing of displaced families, to the applicant's status as a serviceman or veteran or relationship to a serviceman or veteran or to a disabled serviceman or veteran, and to the applicant's age or disability, housing conditions, urgency of housing need, and source of income: *Provided*, That in establishing such admission policies the public housing agency shall accord to families of low income such priority over single persons as it determines to be necessary to avoid undue hardship;

Housing and Urban Development Act of 1968, as amended, Title XVI, § 1601, 42 U. S. C. § 1441(a).

(a) The Congress finds that the supply of the Nation's housing is not increasing rapidly enough to meet the national housing goal, established in the Housing Act of 1949, of the "realization as soon as feasible of the goal of a decent home and a suitable living environment for every American family". The Congress reaffirms this national housing goal and determines that it can be substantially achieved within the next decade by the construction or rehabilitation of twenty-six million housing units, six million of these for low and moderate income families.

(b) The Congress further finds that policies designed to contribute to the achievement of the national housing goal have not directed sufficient attention and resources to the preservation of existing housing and neighborhoods, that the deterioration and abandonment of housing for the Nation's lower income families has accelerated over the last decade, and that this acceleration has contributed to neighborhood disintegration and has partially negated the progress toward achieving the national housing goal which has been made primarily through new housing construction.

(c) The Congress declares that if the national housing goal is to be achieved, a greater effort must be made to encourage the preservation of existing housing and neighborhoods through such measures as housing preservation, moderate rehabilitation, and improvements in housing management and maintenance, in conjunction with the provision of adequate municipal services. Such an effort should concentrate, to a greater extent than it has in the past, on housing and neighborhoods where deterioration is evident but has not yet become acute.

Housing and Community Development Act of 1974, Pub. L. 93-383, 88 Stat. 663.

Section 101.

Sec. 101. (a) The Congress finds and declares that the Nation's cities, towns, and smaller urban communities face critical social, economic, and environmental problems arising in significant measure from—

(1) the growth of population in metropolitan and other urban areas, and the concentration of persons of lower income in central cities; and

(2) inadequate public and private investment and reinvestment in housing and other physical facilities, and related public and social services, resulting in the growth and persistence of urban slums and blight and the marked deterioration of the quality of the urban environment.

(b) The Congress further finds and declares that the future welfare of the Nation and the well-being of its citizens depend on the establishment and maintenance of viable urban communities as social, economic, and political entities, and require—

(1) systematic and sustained action by Federal, State, and local governments to eliminate blight, to conserve and renew older urban areas, to improve the living environment of low- and moderate-income families, and to develop new centers of population growth and economic activity;

(2) substantial expansion of and greater continuity in the scope and level of Federal assistance, together with increased private investment in support of community development activities; and

(3) continuing effort at all levels of government to streamline programs and improve the functioning of agencies responsible for planning, implementing, and evaluating community development efforts.

(c) The primary objective of this title is the development of viable urban communities, by providing decent housing and a suitable living environment and expanding economic opportunities, principally for persons of low and moderate income. Consistent with this primary objective, the Federal assistance provided in this title is for the support of community development activities which are directed toward the following specific objectives—

(1) the elimination of slums and blight and the prevention of blighting influences and the deterioration of property and neighborhood and community facilities of importance to the welfare of the community, principally persons of low and moderate income;

(2) the elimination of conditions which are detrimental to health, safety, and public welfare, through code enforcement, demolition, interim rehabilitation assistance, and related activities;

(3) the conservation and expansion of the Nation's housing stock in order to provide a decent home and a suitable living environment for all persons, but principally those of low and moderate income;

(4) the expansion and improvement of the quantity and quality of community services, principally for persons of low and moderate income, which are essential for sound community development and for the development of viable urban communities;

(5) a more rational utilization of land and other natural resources and the better arrangement of resi-

dential, commercial, industrial, recreational, and other needed activity centers;

(6) the reduction of the isolation of income groups within communities and geographical areas and the promotion of an increase in the diversity and vitality of neighborhoods through the spatial deconcentration of housing opportunities for persons of lower income and the revitalization of deteriorating or deteriorated neighborhoods to attract persons of higher income; and

(7) the restoration and preservation of properties of special value for historic, architectural, or esthetic reasons.

It is the intent of Congress that the Federal assistance made available under this title not be utilized to reduce substantially the amount of local financial support for community development activities below the level of such support prior to the availability of such assistance.

(d) It is also the purpose of this title to further the development of a national urban growth policy by consolidating a number of complex and overlapping programs of financial assistance to communities of varying sizes and needs into a consistent system of Federal aid which—

(1) provides assistance on an annual basis, with maximum certainty and minimum delay, upon which communities can rely in their planning;

(2) encourages community development activities which are consistent with comprehensive local and areawide development planning;

(3) furthers achievement of the national housing goal of a decent home and a suitable living environment for every American family; and

(4) fosters the undertaking of housing and community development activities in a coordinated and mutually supportive manner.

Section 109(a).

SEC. 109. (a) No person in the United States shall on the ground of race, color, national origin, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under this title.

Section 201(a) [Providing for Sections 2, 3(1), 3(2), and 6(c)(4)(A) of the United States Housing Act of 1937, as amended.]

SEC. 201. (a) The United States Housing Act of 1937 is amended to read as follows:

* * *

"DECLARATION OF POLICY

"SEC. 2. It is the policy of the United States to promote the general welfare of the Nation by employing its funds and credit, as provided in this Act, to assist the several States and their political subdivisions to remedy the unsafe and unsanitary housing conditions and the acute shortage of decent, safe, and sanitary dwellings for families of low income and, consistent with the objectives of this Act, to vest in local public housing agencies the maximum amount of responsibility in the administration of their housing programs. No person should be barred from serving on the board of directors or similar governing body of a local public housing agency because of his tenancy in a low-income housing project.

"DEFINITIONS

"SEC. 3. When used in this Act—

"(1) The term, 'low-income housing' means decent, safe, and sanitary dwellings within the financial reach of families of low income, and embraces all necessary appurtenances thereto. Except as otherwise provided in this section, income limits for occupancy and rents shall be fixed by the public housing agency and approved by the Secretary. The rental for any dwelling unit shall not exceed one-fourth of the family's income as defined by the Secretary. Notwithstanding the preceding sentence, the rental for any dwelling unit shall not be less than the higher of (A) 5 per centum of the gross income of the family occupying the dwelling unit, and (B) if the family is receiving payments for welfare assistance from a public agency and a part of such payments, adjusted in accordance with the family's actual housing costs, is specifically designated by such agency to meet the family's housing costs, the portion of such payments which is so designated. At least 20 per centum of the dwelling units in any project placed under annual contributions contracts in any fiscal year beginning after the effective date of this section shall be occupied by very low-income families. In defining the income of any family for the purpose of this Act, the Secretary shall consider income from all sources of each member of the family residing in the household, except that there shall be excluded—

"(A) the income of any family member (other than the head of the household or his spouse) who is under eighteen years of age or is a full-time student;

"(B) the first $300 of the income of a secondary wage earner who is the spouse of the head of the household;

"(C) an amount equal to $300 for each member of the family residing in the household (other than the head of the household or his spouse) who is under eighteen years of age or who is eighteen years of age or older and is disabled or handicapped or a full-time student;

"(D) nonrecurring income, as determined by the Secretary;

"(E) 5 per centum of the family's gross income (10 per centum in the case of elderly families);

"(F) such extraordinary medical or other expenses as the Secretary approves for exclusion; and

"(G) an amount equal to the sums received by the head of the household or his spouse from, or under the direction of, any public or private nonprofit child placing agency for the care and maintenance of one or more persons who are under eighteen years of age and were placed in the household by such agency.

"(2) The term 'low-income families' means families of low income who cannot afford to pay enough to cause private enterprise in their locality or metropolitan area to build an adequate supply of decent, safe, and sanitary dwellings for their use. The term 'very low-income families' means families whose incomes do not exceed 50 per centum of the median family income for the area, as determined by the Secretary with adjustments for smaller and larger families. The term 'families' includes families consisting of a single person in the case of (A) a person who is at least sixty-two years of age or is under a disability as defined in section 223 of the Social Security Act or in section 102(5) of the Developmental Disabilities Services and Facilities Construction Amendments of 1970, or is handicapped, (B)

a displaced person, and (C) the remaining member of a tenant family; and the term 'elderly families' means families whose heads (or their spouses), or whose sole members, are persons described in clause (A). A person shall be considered handicapped if such person is determined, pursuant to regulations issued by the Secretary, to have an impairment which (i) is expected to be of long-continued and indefinite duration, (ii) substantially impedes his ability to live independently, and (iii) is of such a nature that such ability could be improved by more suitable housing conditions. The term 'displaced person' means a person displaced by governmental action, or a person whose dwelling has been extensively damaged or destroyed as a result of a disaster declared or otherwise formally recognized pursuant to Federal disaster relief laws. Notwithstanding the preceding provisions of this paragraph, the term 'elderly families' includes two or more elderly, disabled, or handicapped individuals living together, or one or more such individuals living with another person who is determined under regulations of the Secretary to be a person essential to their care or well being.

"Sec. 6.

* * *

"(c) Every contract for annual contributions shall provide that—

* * *

"(4) the public housing agency shall comply with such procedures and requirements as the Secretary may prescribe to assure that sound management practices will be followed in the operation of the project, including requirements pertaining to—

"(A) the establishment of tenant selection criteria designed to assure that, within a reasonable period of

time, the project will include families with a broad range of incomes and will avoid concentrations of low-income and deprived families with serious social problems, but this shall not permit maintenance of vacancies to await higher income tenants where lower income tenants are available;

Regulations of the United States Department of Housing and Urban Development Under the Civil Rights Act of 1964, 24 C. F. R.

Section 1.4(a).

(a) *General.* No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity to which this Part 1 applies.

Section 1.4(b)(1) and (2).

(b) *Specific discriminatory actions prohibited.* (1) A recipient under any program or activity to which this Part 1 applies may not, directly or through contractual or other arrangements, on the ground of race, color, or national origin:

(i) Deny a person any housing, accommodations, facilities, services, financial aid, or other benefits provided under the program or activity;

(ii) Provide any housing, accommodations, facilities, services, financial aid, or other benefits to a person which are different, or are provided in a different manner, from those provided to others under the program or activity;

(iii) Subject a person to segregation or separate treatment in any matter related to his receipt of housing, ac-

commodations, facilities, services, financial aid, or other benefits under the program or activity;

(iv) Restrict a person in any way in access to such housing, accommodations, facilities, services, financial aid, or other benefits, or in the enjoyment of any advantage or privilege enjoyed by others in connection with such housing, accommodations, facilities, services, financial aid, or other benefits under the program or activity;

(v) Treat a person differently from others in determining whether he satisfies any occupancy, admission, enrollment, eligibility, membership, or other requirement or condition which persons must meet in order to be provided any housing, accommodations, facilities, services, financial aid, or other benefits provided under the program or activity;

(2)(i) A recipient, in determining the types of housing, accommodations, facilities, services, financial aid, or other benefits which will be provided under any such program or activity, or the class of persons to whom, or the situations in which, such housing, accommodations, facilities, services, financial aid, or other benefits will be provided under any such program or activity, or the class of persons to be afforded an opportunity to participate in any such program or activity, may not, directly or through contractual or other arrangements, utilize criteria or methods of administration which have the effect of subjecting persons to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program or activity as respect to persons of a particular race, color, or national origin.

(ii) A recipient, in operating low-rent housing with Federal financial assistance under the United States Hous-

ing Act of 1937, as amended (42 U. S. C. 1401 et seq.), shall assign eligible applicants to dwelling units in accordance with a plan, duly adopted by the recipient and approved by the responsible Department official, providing for assignment on a community-wide basis in sequence based upon the date and time the application is received, the size or type of unit suitable, and factors affecting preference or priority established by the recipient's regulations, which are not inconsistent with the objectives of title VI of the Civil Rights Act of 1964 and this Part 1. The plan may allow an applicant to refuse a tendered vacancy for good cause without losing his standing on the list but shall limit the number of refusals without cause as prescribed by the responsible Department official.

United States Department of Housing and Urban Development, Low-Rent Housing Administration of Program Handbook, Circular RHA 7401.1, Chapter 9, Section 1, Appendix 2, Paragraph 1(d)(1).

Requirements for Administration of Low-Rent Housing Programs Under Title VI of the Civil Rights Act of 1964.

The following requirements are established for Local Authorities in the administration of their low-rent housing programs receiving Federal financial assistance under the United States Housing Act of 1937, as amended. The requirements are established in order that Local Authorities may meet their responsibilities pursuant to Title VI of the Civil Rights Act of 1964 and in the interest of efficiency and economy required by the United States Housing Act of 1937.

1. *Methods of Administration.* Methods of administration, staffing arrangements, assignment of responsibilities and

procedures shall provide for the following (reports thereof, along with copies of all materials used or produced, to be furnished promptly to the Regional Housing Assistance Office):

• • •

d. A plan for selection of applicants and assignment of dwelling units to assure equal opportunity and nondiscrimination on grounds of race, color, or natural origin. To this end:

(1) The Local Authority shall elect either to establish a plan under which the eligible applicant must accept the vacancy offered or be moved to last place on the eligible applicant list, *or* to establish a plan providing for a system of rejections as follows:

(a) If there is a suitable vacant unit in more than one location, the applicant shall be offered the unit at the location that contains the largest number of vacancies. If the applicant rejects the first vacancy offered he shall be offered a suitable unit at the location containing the next highest number of vacancies. If the applicant rejects three such offers, he shall be placed at the bottom of the eligible applicant list. The Local Authority shall make all such offers in sequence and there must be a rejection of a prior offer before the applicant may be offered another location.

"Location" means any low-rent housing site as established in a Development Program, except that when sites are adjacent or within a block of each other, such sites collectively shall be considered one location. In scattered site developments, the Local Authority shall make rea-

sonable determinations of "locations" based on the specific scatterization, including any groupings that may be reasonably consistent with the purpose of these requirements. Such determinations shall be submitted for approval to the Assistant Regional Administrator for Housing Assistance as part of the submission required by subparagraph 1d(3) below.

(b) If there are only two locations at which suitable vacancies exist, the applicant shall be offered a unit at that location first where the most vacancies exist. If the applicant rejects the first vacancy offered, he shall be offered the second and, if he rejects the second, his name shall be moved to the bottom of the eligible applicant list. The Local Authority shall offer all such locations in sequence and there must be a rejection of a prior offer before the applicant may be offered another location.

(c) If there is only one location at which suitable vacancies exist, the applicant shall be offered a unit at that location and if he rejects such offer, he shall be given a second offer of a suitable vacancy as soon as one becomes available. If he rejects the second offer he shall be moved to the bottom of the eligible applicant list.

United States Department of Housing and Urban Development, Instructions for Preparation of Civil Rights Plan of Selection of Applicants and Assignment of Dwelling Units.

Instructions, First Three Paragraphs.

INSTRUCTIONS FOR PREPARATION OF CIVIL RIGHTS PLAN OF SELECTION OF APPLICANTS AND ASSIGNMENT OF DWELLING UNITS

Please refer to Chapter 9, Section 1, RHA 7401.1 of the Low-Rent Housing Administration of Programs Handbook, dated June 1969, Equal Opportunity Requirements for Administration of Low-Rent Housing Under Title VI of the Civil Rights Act of 1964, and Appendices 1, 2 and 3 thereto.

Adoption of an acceptable Plan of Selection and Assignment of Dwelling Units is mandatory for all local housing authorities. Enclosed are the following Exhibits for your guidance:

Exhibit A: HUD-53037A of January 1968 on which the adopted Plan is to be submitted. We call your attention to the requirement that the approving Board Resolution must accompany the HUD-53037A. Two acceptable Plans (A and B) are attached to Exhibit A. You may adopt either one. The Plan selected should be adopted in its entirety, verbatim.

Plan B (Chosen by Chester Housing Authority).

PLAN B.

Each applicant shall be assigned his appropriate place on a community-wide basis in sequence based upon date and time his application is received, suitable type or size of unit, and factors affecting preference or priority estab-

lished by the Local Authority's regulations, which are not inconsistent with the objectives of Title VI of the Civil Rights Act of 1964 and the HUD regulations and requirements pursuant thereto.

The plan for selection of applicants and assignment of dwelling units to assure equal opportunity and nondiscrimination on grounds of race, color, or national origin is as follows:

(a) If there is a suitable vacant unit in more than one location, the eligible applicant shall be offered the unit at the location that contains the largest number of vacancies. If the applicant rejects the first vacancy offered he shall be offered a suitable unit at the location containing the next highest number of vacancies. If the applicant rejects three such offers, he shall be placed at the bottom of the eligible applicant list. The Local Authority shall make all such offers in sequence and there must be a rejection of a prior offer before the applicant may be offered another location.

"Location" means any low-rent housing site as established in a Development Program, except that when sites are adjacent or within a block of each other, such sites collectively shall be considered one location. In scattered site developments, the Local Authority shall make reasonable determinations of "locations" based on the specific scatterization, including any groupings that may be reasonably consistent with the purpose of these requirements. (Such determinations shall be submitted for approval to the Assistant Regional Administrator for Housing Assistance as part of the submission required by subparagraph 1d(3) Appendix 2, Section 1, Chapter 9, RHA 7401.1 of the LKH Administration of Program Handbook, dated June 1969.

(b) If there are only two locations at which suitable vacancies exist, the eligible applicant shall be offered a unit at that location first where the most vacancies exist. If the applicant rejects the first vacancy offered, he shall be offered the second and, if he rejects the second, his name shall be moved to the bottom of the eligible applicant list. The Local Authority shall offer all such locations in sequence and there must be a rejection of a prior offer before the applicant may be offered another location.

(c) If there is only one location at which suitable vacancies exist, the eligible applicant shall be offered a unit at that location and if he rejects such offer, he shall be given a second offer of a suitable vacancy as soon as one becomes available. If he rejects the second offer he shall be moved to the bottom of the eligible applicant list.

1. If the applicant is willing to accept the unit offered but is unable to move at the time of the offer and presents clear evidence of his inability to move to the Local Authority's satisfaction, refusal of the offer shall not count as one of the number of allowable refusals permitted the applicant before placing his name at the bottom of the eligible applicant list.

2. If the applicant presents to the satisfaction of the Local Authority clear evidence that acceptance of a given offer of a suitable vacancy will result in undue hardship or handicap not related to considerations of race, color, or national origin, such as inaccessibility to source of employment, children's day care and the like, refusal of such an offer shall not be counted as one of the number of allowable refusals permitted an applicant before placing his name at the bottom of the eligible applicant list.

Consolidated Annual Contributions Contract of October 15, 1970, Between the United States of America and Chester Housing Authority.

Part I, Sections 14(A)(2) and (3).

(2) The Local Authority shall not, on account of creed, discriminate in the sale, leasing, rental, or other disposition of housing or related facilities (including land) included in any Project or in the use or occupancy thereof, nor deny to any family the opportunity to apply for such housing, nor deny to any eligible applicant the opportunity to lease or rent any dwelling in any such housing suitable to its needs.

(3) Failure of the Local Authority to comply with the requirements of (1) or (2) above shall constitute a Substantial Default under any contract between the Government and the Local Authority covering Federal financial assistance under the United States Housing Act of 1937, and this Section shall be construed to apply so long as any such contract is in force or effect.

Part II, Sections 208 and 209.

Sec. 208. Tenant Selection.

The Local Authority shall select tenants and assign to them dwellings in accordance with its established procedure which shall in all respects conform to the requirements of the Act and of this Contract. In the selection of tenants the Local Authority shall not discriminate against families, otherwise eligible for admission to the Projects, because their incomes are derived in whole or in part from public assistance; and in initially selecting families for admission to dwellings of given sizes and at specified rents the Local Authority shall (subject to the preferences prescribed in Sec. 209) give preference to families having the most urgent

housing needs, and thereafter, in selecting families for admission to such dwellings, shall give due consideration to the urgency of the families' housing needs. The Local Authority shall assign to tenants dwelling accommodations consisting of the number of rooms necessary (but no greater than necessary) to provide decent, safe, and sanitary accommodations for the proposed occupants thereof without overcrowding.

Sec. 209. Preferences in Selection of Tenants.

(A) The Local Authority, as among Families of Low Income which are eligible applicants for occupancy in dwellings of given sizes and at specified rents, shall extend the following preferences in the selection of tenants:

(1) First, to families which are to be displaced by any low-rent housing project or by any public slum-clearance or redevelopment project initiated after January 1, 1947, or which were so displaced within three years prior to making application to the Local Authority for admission to any low-rent housing; and as among such families first preference shall be given to families of disabled Veterans whose disability has been determined by the Veterans' Administration to be service-connected, and second preference shall be given to families of deceased Veterans and Servicemen whose death has been determined by the Veterans' Administration to be service-connected, and third preference shall be given to families of other Veterans and Servicemen;

(2) Second, to families of other Veterans and Servicemen and as among such families first preference shall be given to families of disabled Veterans whose disability has been determined by the Veterans' Administration to be service-connected, and second preference shall be given to

families of deceased Veterans and Servicemen whose death has been determined by the Veterans' Administration to be service-connected.

(B) The requirements in Sec. 208 and in subsection (A) of this Sec. 209, that preferences shall be given "at specified rents" shall be taken to mean that the Local Authority may initially establish two or more ranges of specified rents within which such preferences are to be applied, and the total number of units in the Projects shall be allocated among such ranges so as to serve as nearly as possible a representative cross section of eligible Families of Low Income in the locality with due regard to the financial solvency of the Projects: *Provided,* That if the Local Authority does not initially establish two or more such specified ranges of rents, it must establish two or more appropriate ranges in the event that, due to the exercise of the preferences, (1) the Projects are not being occupied by a representative cross section of eligible Families of Low Income in the locality, or (2) the financial solvency of the Projects is jeopardized.

SUPREME COURT, U. S.

FILE

FEB 13

MICHAEL RODAK,

In the Supreme Court of the United States

October Term, 1974

No. 74-856

CHESTER HOUSING AUTHORITY,
Petitioner

v.

PENNSYLVANIA HUMAN RELATIONS COMMISSION,
Respondent

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA

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QUESTIONS PRESENTED

I. Where the state agency which enforces the state law prohibiting housing discrimination has found after a hearing that the projects of a public housing authority are virtually totally segregated by race and has found that the authority employs tenant assignment practices which require such segregation, may the agency enter an order requiring the authority to take affirmative action designed to cause the desegregation of the projects by achieving in each of the four housing projects the same racial composition that exists throughout all the authority's projects? *(Answered in the affirmative by the Supreme Court of Pennsylvania.)*

II. Does the order of the Pennsylvania Human Relations Commission violate or conflict with the housing policy of the United States? *(Answered in the negative by the Supreme Court of Pennsylvania.)*

STATEMENT OF THE CASE

Respondent, Pennsylvania Human Relations Commission ("The Commission") is the agency established under the Pennsylvania Human Relations Act to enforce the provisions of the Act against, inter alia, discrimination in housing because of race. 42 P.S. §951 et seq.

On May 1, 1970, the Commission initiated a complaint against the Petitioner ("CHA") charging it with maintaining housing projects "which are segregated by the race of the tenants therein".

The Commission conducted an investigation and determined that there was probable cause to credit the allegation of the complaint. The Commission endeavored to eliminate the unlawful discriminatory practices complained of by conciliation, but this endeavor failed. Thereupon, the Commission conducted a public hearing on this complaint on August 5, 1971.

The Commission established that the racial composition of CHA's four projects was as follows:

	White Tenants	*Black Tenants*
Lamokin Village	0	346
McCaffery Village	347	0
Ruth L. Bennett Homes	0	385
William Penn Village	20	257

(A. 6)

At the hearing, the Commission established, from a random sample of tenants, seventeen incidents of racial discrimination on the part of CHA in the leasing of apartments, each showing that when a Black prospective tenant applied he would be denied housing until a vacancy arose in a "Black" project even though one existed in the "White" project, or that conversely a White prospective tenant would be kept waiting until a vacancy arose in the "White" project (A. 3).

CHA's primary defense at the hearing was that it followed and was bound by the tenant selection procedure of the Department of Housing and Urban Development.

William Cousins, Director of Assisted Programs in the Equal Opportunity Division in the Philadelphia Regional Office of H.U.D., testified that housing authorities are required to comply with all State laws, including the Pennsylvania Human Relations Act (143a of Record below). He testified that the purpose of the Tenant Selection Plan was to bring about a policy of nondiscrimination and that the goals of the plan had not been met in Chester (148a below).

The Commonwealth Court found that CHA did not adhere to the H.U.D. plan (A. 32). The Supreme Court of Pennsylvania reiterated the Commonwealth Court's position on this point while noting that since CHA had not appealed from the Commonwealth Court decision on this point it was bound by it (A. 18).

On April 24, 1972, the Commission issued its decision, finding that CHA had maintained the projects

as segregated by race and had by this practice aided and abetted segregation of the students of the public schools of the City of Chester, in violation of Section 5(h)(1) and 5(e) of the Pennsylvania Human Relations Act. Accompanying the decision was the Commission's final order, consisting of ten (10) provisions (A. 45-47), which ordered CHA to cease and desist from employing its present tenant assignment procedure and to take specified affirmative action which in the judgment of the Commission would effectuate the purposes of the Pennsylvania Human Relations Act.

CHA appealed to the Commonwealth Court which found that the Commission's Findings of Fact Nos. 9 and 10 were not supported by substantial evidence and thus struck down those provisions of the final order "implementing a far-reaching desegregation plan," not because those provisions of the order were "unenforceable" but because they were "unwarranted because of the absence of evidence to support the Order" (A. 35).

On September 4, 1973, the Supreme Court of Pennsylvania granted the Commission's petition for allowance of appeal. On October 16, 1974, the Supreme Court filed its decision reinstating those portions of the Commission's order stricken by the Commonwealth Court and affirmed that Court's order as so modified.

On November 25, 1974, CHA filed a petition for leave to file a petition for rehearing and for an extension of time therefor. The grounds raised in its petition were essentially those contained in its petition

for writ of certiorari to this Court. The Commission filed an answer in opposition to the petition for rehearing to which it attached a copy of a letter of December 2, 1974 which it had received from William Hall, Regional Counsel. A copy is attached hereto as Exhibit A. In the letter, Mr. Hall reminded CHA that when the Commission first issued its order H.U.D. had advised CHA to revise its tenant assignment policy so as to conform with the Commission order. Mr. Hall renewed that advice and suggested that CHA comply with the Commission order forthwith.

Attached hereto as Exhibit B is a letter from Mr. Hall of January 13, 1975 replying to a letter from the previous counsel of CHA. This letter reiterates H.U.D.'s position that the Commission order is consonant with the housing policy of the United States. Attached hereto as Exhibit C is the memorandum from H.U.D. Assistant Secretary for Equal Opportunity, Gloria E. A. Toote, which Mr. Hall attached to his letter, in which Secretary Toote approved a consent order with provisions comparable to those to which CHA now objects.

ARGUMENT

I. The Commission May Enter an Order Requiring a Segregated Housing Authority To Take Affirmative Action To Desegregate Its Projects

The housing projects of CHA are indisputably segregated by race and, although the Pennsylvania Supreme Court rested its decision on the existence of de facto segregation, the record is clear and is uncontradicted that CHA employed tenant assignment practices so as to deliberately and rigidly maintain desegregation. Even without this additional flagrant factor of deliberate segregation, it is well established in law that a public housing authority may not even utilize practices which will have the *effect* of creating or perpetuating segregation. See *Shannon v. United States Department of Housing and Urban Development*, 436 F. 2d 809 (3rd Cir. 1970), and *Otero v. New York Housing Authority*, 484 F. 2d 1122 (2d Cir. 1973).

Not only are such practices unlawful and thus enjoinable, but a public housing authority has a constitutional (as well as statutory) duty to act affirmatively to integrate its projects and to "erase the effects of past discrimination." *Otero v. New York Housing Authority*, supra.

In *Pennsylvania Human Relations Commission v. Chester School District*, 427 Pa. 157, 233 A. 2d 290

(1967), the Pennsylvania Supreme Court held that the Pennsylvania Human Relations Act reached the problem of de facto school segregation and upheld an extensive Commission order designed to desegregate the public schools.

In its opinion in the instant case, the Pennsylvania Supreme Court noted that:

> "In Chester School District, we reasoned that racial imbalance triggered the Commission's authority under the Human Relations Act to order affirmative action because to hold otherwise would ignore 'completely the Legislative conclusion that racial segregation in public schools, whatever its source threatens the peace, health, safety and general welfare of the Commonwealth and its inhabitants.' 427 Pa. at 170, 233 A. 2d at 297. Today we reach a similar conclusion with respect to racial imbalance in housing covered by the Act." (A 9)

Having recognized the Commission authority and duty to order affirmative action to achieve desegregation, the Court below turned to the specific provisions of the Commission's final order here under attack and reiterated its holding in *Balsbaugh v. Rowland*, 447 Pa. 423, 290 A. 2d 85 (1972) that "racial consciousness is appropriate in fashioning a remedy once unlawful discrimination has been found to exist" (A. 22).

> " 'Just as the race of students must be considered in determining whether a constitutional violation has occurred, so also must race be considered in formulating a remedy.' " *Id.* at 437-